Greaves Cotton and Co. and Others

Vs

Their Workmen

Civil Appeals Nos. 272 to 280 of 1962

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

14.11.1963

JUDGMENT

WANCHOO J. –

These nine appeals by special leave arise out of the awards of the Industrial Tribunal, Bombay and will be dealt with together. There were disputes between the four appellants - companies and the respondents, their workmen, which were referred for adjudication to the Industrial Tribunal by nine reference-orders on various dates between April to December 1959. The main dispute which gave rise to the references was with respect to wages, dearness allowance and gratuity. The references included other items also but we are not concerned in the present appeals with those items. Of the four companies who are the appellants before us, Greaves Cotton and Co., is the first company and its main activity is to invest money in manufacturing concerns. The second company is Greaves Cotton and Crompton Parkinson Private Limited and its main business is distribution of the products of a manufacturing concern known as Crompton Parkinson (Works) India Limited and service and repair to the said products at its workshop. The third company is Konyon Greaves Private Limited and its main business is to manufacture high grade interstranded ropes for the textile industry. The last company is Ruston and Hornsby (India) Private Limited and its main business is to manufacture oil engines and pumps. The last three companies are controlled by the first company, namely Greaves Cotton and Co., in one way or the other and that is how the main dispute relating to wages and dearness allowance was dealt with together by the tribunal. There were two references each with respect to the first three companies and three references with respect to Ruston and Hornsby Private Limited; and that is how there are nine appeals before us. There were nine awards, though the main award dealing with the main dispute relating to wages and dearness allowance was common.

It appears that wages and dearness allowance prevalent in the four companies had been continuing since 1950 when the last award was made between the parties. It may also be stated that there was no serious dispute before the Tribunal as to the financial capacity of the companies and further, as the first company controls the other three companies, the wages and dearness allowance are the same so far as the clerical and subordinate staff are concerned. The same appears to be the case with respect to factory-workmen.

The Tribunal dealt with clerical and subordinate staff separately from the factory-workmen. So far as the clerical and subordinate staff are concerned, the Tribunal, after a comparison of wages and dearness allowance prevalent in the four companies with wages and dearness allowance prevalent in comparable concerns revised them. Further it provided how the clerical and subordinate staff would be fitted in the new scales after making certain adjustments and in that connection it gave one to

three extra increments depending upon length of service between 1950 to 1959. Finally, it ordered that the award would have effect from April 1, 1959, which was a week before the first reference was made with respect to the first company. The Tribunal then dealt with the case of the factory-workmen and prescribed certain rates of wages. Further it gave the same dearness allowance to the factory-workmen as to the clerical and subordinate staff and directed adjustments also on the same basis. Finally it considered the question of gratuity and the main provision in that respect was that the maximum gratuity allowable would be upto 20 months and a provision was also made to the effect that if an employee was dismissed or discharged for misconduct which caused financial loss to the employer, gratuity to the extent of that loss only will not be paid to the employee concerned.

The main attack of the appellants is on the award as regards wages and dearness allowance. It is urged that the industry-cum-region formula, which is the basis for fixation of wages and dearness allowance has not been properly applied by the Tribunal and it had been carried away by the recommendations of the tripartite conference which suggested need-based minimum wages. It is also urged that whatever comparison was made was with concerns which were not comparable and the wages awarded were even higher than those prevalent in any comparable concern. It is also urged that the Tribunal did not consider the total effect of the increase it was granting in basic wage and dearness allowance together as it should have done, for the purpose of finding out whether the total pay packet in the appellants' concerns can bear comparison with the total pay packet of the concerns with which the Tribunal had compared the appellants' concerns. In this connection it is urged that in fixing scales of wages the Tribunal increased the maximum and the minimum and the annual rate of increment and decreased the span of years in which the maximum would be reached. Adjustments made by the Tribunal are also attacked and so is the order making the award enforceable from April 1, 1959. As to the factory workmen it is urged that the Tribunal made no attempt to make a comparison with wages prevalent even in what it considered to be comparable concerns. Lastly it is urged that the Tribunal created a new category of factory workmen called higher unskilled which was not demanded and which in any case did not exist in any comparable concern.

The first question therefore which falls for decision is whether the Tribunal went wrong in not following the industry-cum-region principle and in leaning on the recommendations of the Tripartite Conference. It is true that the Tribunal begins its award with a reference to the recommendations of the Tripartite Conference wherein the need-based minimum wage was evolved. It is urged that this disposed the Tribunal to pitch wage-scales too high. It is however clear from the award that though the Tribunal discussed the recommendations of the Tripartite Conference at some length, when it actually came to make the award it did not follow those recommendations. The reason why it referred to those recommendations was that the respondents-workmen based their claim on them and wanted that the Tribunal should fix wage-scales accordingly. But the Tribunal's conclusion was that it was not feasible to do so, though looking at the financial stability of the appellants, emoluments needed upgrading. It then went on to consider the wages prevalent in comparable concerns and finally fixed wages for the appellants on the basis of wages prevalent in such concerns. Though therefore the recommendations of the Tripartite Conference are referred to in the Tribunal's award, its final decision is not based on them and what the Tribunal has done is to make comparisons with what it considered comparable concerns so far as clerical and subordinate staff are concerned. We are therefore not prepared to say that reference to the recommendations of the Tripartite Conference in the opening part of the award was irrelevant and therefore the rest of the award must be held to be vitiated on that ground alone.

The main contention of the appellants however is that the tribunal has gone wrong in applying the

industry-cum-region formula which is the basis for fixing wages and dearness and has made comparison with concerns which are not comparable. It is also urged that the Tribunal has relied more on the region aspect of the industry-cum-region formula and not on the industry aspect when dealing with clerical and subordinate staff and in this it went wrong. Reference in this connection is made to two decisions of this Court, namely, Workmen of Hindusthan Motors v. Hindusthan Motors [[1962] 2 L.L.J. 352.] and French Motor Car Company v. Their Workman [[1963] Supp. 2 S.C.R. 16] and it is emphasised that the principles laid down in Hindusthan Motors' case [[1962] 2 L.L.J. 352.] were more applicable to the present case than the principles laid down in the French Motor Car Co.'s case [[1963] Supp. 2 S.C.R. 16]. In the Hindusthan Motors case [[1962] 2 L.L.J. 352.], this Court observed that it was ordinarily desirable to have as much uniformity as possible in the wage-scales of different concerns of the same industry working in the same region, as this puts similar industries more or less on an equal footing in their production struggle. This Court therefore applied the wage-scales awarded by the Third Major Engineering Tribunal in Bengal in the case of Hindusthan Motors also. It is urged that the Tribunal should have taken into account comparable concerns in the same industry and provided wage-scales on the same lines so that, so far as manufacturing concerns in the present appeals are concerned, there will be equality in the matter of competition. In the French Motor Car Co.'s case [[1963] Supp. 2 S.C.R. 16] however this Court held so far as clerical staff and subordinate staff are concerned that it may be possible to take into account even those concerns which are engaged in different lines of business for the work of clerical and subordinate staff is more or less the same in all kinds of concerns. We are of opinion that there is no inconsistency as urged in the principles laid down in these two cases. As we have already said the basis of fixation of wages and dearness allowance is industry-cum-region. Where there are a large number of industrial concerns of the same kind in the same region it would be proper to put greater emphasis on the industry part of the industry-cum-region principle as that would put all concerns on a more or less equal footing in the matter of production costs and therefore in the matter of competition in the market and this will equally apply to clerical and subordinate staff whose wages and dearness allowance also go into calculation of production costs. But where the number of comparable concerns is small in a particular region and therefore the competition aspect is not of the same importance, the region part of the industry-cum-region formula assumes greater importance particularly with reference to clerical and subordinate staff and this was what was emphasised in the French Motor Car Co.'s case [[1963] Supp. 2 S.C.R. 16.] where that company was already paying the highest wages in the particular line of business and therefore comparison had to be made with as similar concerns as possible in different lines of business for the purpose of fixing wage-scales and dearness allowance. The principle therefore which emerges from these two decisions is that in applying the industry-cum-region formula for fixing wage scales the Tribunal should lay stress on the industry part of the formula if there are a large number of concerns in the same region carrying on the same industry; in such a case in order that production cost may not be unequal and there may be equal competition, wages should generally be fixed on the basis of the comparable industries, namely, industries of the same kind. But where the number of industries of the same kind in a particular region is small it is the region part of the industry-cum-region formula which assumes importance particularly in the case of clerical and sub-ordinate staff, for, as pointed out in the French Motor Car Co.'s case [[1963] Supp. 2 S.C.R. 16], there is not much difference in the work of this class of employees in different industries. In the present cases it does appear that the Tribunal has leaned more on the region part of the industry-cum-region formula and less on the industry part. But we think that it cannot be said that the Tribunal was wrong in doing so for two reasons. In the first place these four companies are not engaged in the same line of industry; but on account of certain circumstances, namely, that Greaves Cotton and Co. is the controlling company of the other three, it has been usual to keep the same scales for clerical and subordinate staff in all

these concerns. In the second place, it is not clear, as was clear in the Hindusthan Motors case [[1962] 2 L.L.J. 352.] that there are a large number of comparable concerns in the same region. As a matter of fact the main company out of these four is Greaves Cotton and Co. Limited, which is in the main an investment and financial company and the Tribunal was therefore right in taking for comparison such companies as would stand comparison with the main company in the present appeals (namely, Greaves Cotton & Co).

Both parties filed scales of wages prevalent in what they considered to be comparable concerns and it is clear from the documents filed that some of the comparable concerns were the same in the documents filed by the two parties. On the whole therefore we do not think the Tribunal was wrong in putting emphasis on the region aspect of the industry-cum-region formula in the present case insofar as clerical and subordinate staff was concerned, for the four companies before us do not belong to the same industry and Greaves Cotton and Co. controls the other three. Considering therefore the standing of the main company (namely, Greaves Cotton and Co. Ltd.), it was not improper for the Tribunal in the present cases to rely on the comparable concerns which were cited on behalf of the respondents, some of which were common with the comparable concerns cited on behalf of the appellants. What the Tribunal did thereafter was to consider the minimum for various categories of clerical and subordinate staff prevalent in these comparable concerns and the maximum prevalent therein and also the annual increments and the span of years in which the maximum would be reached. The Tribunal then went on to fix scales for various categories of clerical and subordinate staff of the appellants which were in-between the scales found in various concerns. Further, as the financial capacity of the appellants was not disputed, the Tribunal pitched these scales nearer the highest scales taking into account the fact that for nine years after 1950 there had been no increase in wage scales. We do not think therefore that the wage scales fixed by the Tribunal, leaning as it did, on the region aspect of the industry-cum-region formula, for the clerical and subordinate staff can be successfully assailed by the appellants.

It has however been urged that the Tribunal overlooked considering what would be the total wage packet including basic wages and dearness allowance and that has made the total wages (i.e. basic wage and dearness allowance) fixed by the Tribunal much higher in the case of the appellants than in comparable concerns which it took into account. It is true that the Tribunal has not specifically considered what the total wage packet would be on the basis of the scales of wages and dearness allowance fixed by it as it should have done; but considering that wage scales fixed are less than the highest in the comparable concerns though more than the lowest, it cannot be said that the total wage packet in the case of the appellants would be necessarily higher than in the case of the other comparable concerns. This will be clear when we deal with the dearness allowance which has been fixed by the Tribunal, for it will appear that the dearness allowance fixed is more or less on the same lines, i.e. less than the highest but more than the lowest in other comparable concerns. On this basis it cannot be said that the total wage packet fixed in these concerns would be the highest in the region. Though therefore the Tribunal has not specifically considered this aspect of the matter which it should have done its decision cannot be successfully assailed on the ground that the total wage packet fixed is the highest in the region.

This brings us to the case of factory-workmen. We are of opinion that there is force in the contention of a the appellants insofar as the fixation of wage-scales for factory-workmen is concerned. The respondents wanted that separate wages should be fixed for each category of workmen. The Tribunal however rejected this contention and held that the usual pattern of having unskilled, semi-skilled and skilled grades should be followed and the various workmen, though they should be known by their designation and not by the class in which they were being placed, should

be fitted in these categories. In the present concerns, there were six categories from before, namely (i) unskilled, (ii) semi-skilled I, (iii) semi-skilled II, (iv) skilled I, (v) skilled II, and (vi) skilled III. The Tribunal kept these categories though it introduced a seventh category called the higher unskilled. It is not seriously disputed that his category of higher unskilled does not exist in comparable concerns; nor have we been able to understand how the unskilled category can be sub-dividend into two namely, lower and higher unskilled, though we can understand the semi-skilled and skilled categories being sub-dividend, depending upon the amount of skill. But there cannot be degrees of want of skill among the unskilled class. The Tribunal therefore was not justified in creating the class of higher unskilled. It is neither necessary nor desirable to create a higher unskilled category and only the six categories which were prevalent from before should continue.

The main attack of the appellants on the wages fixed for these six categories is that in doing so, the Tribunal completely overlooked the wages prevalent for these categories in concerns which it had considered comparable. A look at the award shows that it is so. The Tribunal has no where considered what the wages for these categories in comparable concerns are, though it appears that some exemplars were filed before it; but the way in which the Tribunal has dealt with the matter shows that it paid scant regard to the exemplars filed before it and did not care to make the comparison for factory-workmen in the same way in which it had made comparison for clerical and subordinate staff. In these circumstances, wage-scales fixed for factory-workmen must be set aside and the matter remanded to the Tribunal to fix wage-scales for factory-workmen dividing them into six categories as at present and then fixing wage after taking into account wages prevalent in comparable concerns. The parties will be at liberty to lead further evidence in this connection.

Then we come to the question of dearness allowance. So far as clerical staff is concerned, dearness allowance prevalent in the appellants' concerns was as follows on the cost of living index of 411-420 :-

> #----------Basic D.A. at cost Variation for every of living index 10 pointin Rs. group 411-420 movement.----------1 to 100 115% of basic salary 5% or the textile scale on 30 day month whichever is higher.101 to 200 35% 11/2%201 to 300 25% 1%301 and above 17 1/2% 3/4%----------##

The Tribunal fixed the dearness allowance as follows :-

> #---------- When the consumer Variation for each Salary slab price index is 10 point rise or between 411-420 fall in the index.----------On 1st Rs. 100 115% 5%On 2nd Rs. 100 50% 2%On 3rd Rs. 100 25% 1%Balance upto Rs.600 20% 1%----------##

A comparison of these figures will show that on the first hundred and the third hundred there is no difference in the scale fixed by the Tribunal; but there is a slight improvement on the second hundred and a very slight one above three hundred. This scale fixed by the Tribunal is in line with some scales of dearness allowance recently fixed by Tribunals in that region. The main improvement is on the second hundred and it cannot really be said that employees in that wage range do not require the higher relief granted to them by tribunals in view of the rise in prices. We do not think therefore that the dearness allowance fixed by the Tribunal, taking into account what was already prevalent in these concerns and also taking into account the trend in that region, can be

successfully assailed so far as clerical staff is concerned.

This brings us to the case of subordinate staff. It appears that in these concerns, subordinate staff was getting dearness allowance on different scales based on the old textile scale of dearness allowance. The Tribunal has put the subordinate staff in the same scale of dearness allowance as clerical staff. The reason given by it for doing so is that incongruity in the payment of dearness allowance between clerical and subordinate staff should be removed. It appears that on account of different scales of dearness allowance for subordinate and clerical staff a member of the subordinate staff drawing the same wages would get less dearness allowance than a member of the clerical staff. The discrepancy is very glaring as between clerical staff and factory-workmen who also have different scales of dearness allowance. The Tribunal therefore thought that dearness allowance which is meant to neutralise the rise in cost of living, should be paid to clerical staff, subordinate staff as well as factory workmen on the same scale, for the need for neutralisation was uniformly felt by all kinds of employees. It also painted that there was a trend towards uniformity in the matter of scales of dearness allowance as between clerical staff and other staff and factory workmen and referred to a number of firms where same scales prevailed for all the staff. It has however been urged on behalf of the appellants that the pattern in the region is that there are different scales of dearness allowance for clerical staff and other staff including factory workmen and the Tribunal therefore should have followed this pattern. The reasons given by the Tribunal for giving the same scales of dearness allowance to all the categories of staff, including the factory-workmen appear to us to be sound. Time has now come when employees getting same wages should get the same dearness allowance irrespective of whether they are working as clerks, or members of subordinate staff or factory-workmen. The pressure of high prices is the same on these various kinds of employees. Further subordinate staff and factory workmen these days are as keen to educate their children as clerical staff and in the circumstances there should be no difference in the amount of dearness allowance between employees of different kinds getting same wages. Further an employee whether he is of one kind or another getting the same wage hopes for the same amenities of life and there is no reason why he should not get them, simply because he is, for example, a factory workman, though he may be coming from the same class of people as a member of clerical staff. On the whole therefore the Tribunal was in our opinion right in following the trend that has begun in this region and in fixing the same scale of dearness allowance for subordinate staff and factory-workmen as in the case of clerical staff. So far therefore as subordinate and clerical staff are concerned, we see no reason to disagree with the rate of dearness allowance fixed by the Tribunal.

This brings us to the case of the dearness allowance for factory-workmen. In their case we have set aside the award relating the wage scales. It follows that we must also set aside the award relating to dearness allowance as we have already indicated that the Tribunal has to take into consideration the total pay packet in fixing wages and dearness allowance. When therefore the case goes back to the Tribunal for fixing wages and dearness allowance for factory-workmen, it will be open to the Tribunal to fix the same rates of dearness allowance for factory-workmen as for clerical staff; but in doing so the Tribunal must when making comparisons take into account the total wage packet (i.e. basic wages fixed by it as well as dearness allowance) and then compare it with the total wage packet of comparable concerns and thus arrive at a just figure for basic wage, for each category of factory-workmen. But the entire matter is left to the Tribunal and it may follow such method as it thinks best so long as it arrives at a fair conclusion after making the necessary comparison.

This brings us to the question of adjustment. We have already said that the Tribunal allowed one to three increments depending upon the length of service between 1950 and 1959. It has been urged that no adjustment should have been allowed taking into account the fact that incremental scales

were in force previously also in these concerns and the Tribunal has increased both the minimum and the maximum in its award and has granted generous annual increments reducing the total span within which a particular employee belonging to clerical and subordinate staff will reach the maximum. Reliance in this connection has been placed on the French Motor Car Co.'s case [[1963] Supp. 2 S.C.R. 16.]. It is true that the Tribunal has given larger increments thus reducing the span of years for reaching the maximum. That alone however is no reason for not granting adjustment. But it is said that in the French Motor Co. case [[1963] Supp. 2 S.C.R. 16.], this Court held that where scales of pay were existing from before no adjustment should be granted by giving extra increments and that that case applies with full force to the facts of the present case. Now in that case this Court pointed out on a review of a large number of awards dealing with adjustments that "generally adjustments are granted when scales of wages are fixed for the first time. But there is nothing in law to prevent the industrial tribunal from granting adjustments to the employees in the revised wage scales even in a case where previously pay-scale were in existence; but this 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." Another reason for the same was that the scales of pay were also low. In those circumstances adjustments have been granted by tribunals a second time. This Court then pointed out in that case that the incremental scales prevalent in that company were the highest for that kind of industry and therefore struck down the adjustments granted and ordered that clerical staff should be fixed on the next higher step in the new scales if there was no step corresponding to the salary drawn by a clerk in the new scale. The question therefore whether adjustment should be granted or not is always a question depending upon the facts and circumstances of each case.

Let us therefore see what the circumstances in the present cases are. Tables of comparative rates of increments were filed before the Tribunal for various grades of clerks. It is clear from the examination of these tables and pay-scales prevalent in the appellants' concerns from 1950 that pay scales were not high as compared to pay scales in comparable concerns. If anything, they were on the low side. Further, as an example, in the case of junior clerks, the first rate of increment was Rs. 5 in the appellants' concerns and this rate went on for 13 years; in other concerns where the first rate of increment was Rs. 5 it lasted for a much shorter period, which in no case exceeded eight years and was in many cases three or four years. In some concerns the first rate of increment was higher than Rs. 5. Almost similar was the case with senior clerks. So it appears that in the appellants' concerns the first rate of increment was generally on the low side and lasted for a longer period than in the case of comparable concerns. In these circumstances if the Tribunal decided to give increments by way of adjustments it cannot be said that the Tribunal went wrong. The facts in these cases are different from the facts in the case of the French Motor Car Co.'s case [[1963] Supp. 2 S.C.R. 16.] and therefore (1) we see no reason for interfering with the order of adjustment. After the change in wage-scales, dearness allowance and adjustment, the employees of the appellants' concerns will stand comparison with some of the best concerns in that region. But considering that there is no question of want of financial capacity and that Greaves Cotton & Co. which is the main company concerned in these appeals, has a high standing in that region, we do not think that the total wage packet fixed is abnormal or so disproportionate as compared to the total wage packet in other comparable concerns as to call for any interference with adjustments.

The next question is about the so-called retrospective effect of the award. The first reference was made to the Tribunal on April 8, 1959, while the last was in December 1959. What the Tribunal has done is to grant wage-scale etc., from April 1, 1959. This cannot in our opinion be said to be really retrospective, because it is practically from the date of the first reference in the case of the main

company. On the whole therefore we see no reason to interfere with order of the Tribunal fixing the date from which the award would come into force.

Lastly we come to the question of gratuity. The attack in this connection is on two aspects of the gratuity scheme. The first is about the fixation of 20 months as the maximum instead of 15 months, which was usual so far. The second is with respect to deduction from gratuity only to the extent of the financial loss occasioned by misconduct in case of dismissal for misconduct. So far as the second provision is concerned it cannot be disputed that this is the usual provision that is being made in that region. So far as the increase in the maximum from 15 months to 20 months is concerned, it appears that the Tribunal has relied on a number of cases in which the maximum is higher than fifteen months wages. In these circumstances considering that tribunals have now begun to give a higher ceiling and in one concern, namely Mackinnon Mackenzie, the ceiling has been fixed even so high as thirty months by agreement, we do not think that any interference is called for in the present case.

We therefore dismiss the appeals so far as retrospective effect and adjustments as also fixation of wages and dearness allowance with respect to clerical and subordinate staff are concerned. We allow the appeal with respect to factory-workmen and send the cases back to the Tribunal for fixing the wage structure including basic wage and dearness allowance and for granting adjustments in the light of the observations made by us. The new award pursuant to this remand will also come into force from the same date, namely, April 1, 1959. The appeals with respect to gratuity are dismissed. In the circumstances we order parties to bear their own costs. Two months from today is allowed to pay up the arrears.

Appeal partly allowed and remanded.

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