Nawabganj Sugar Mills Company, Limited

v.

Its Workmen and Another

(Supreme Court Of India)

HON'BLE MR. JUSTICE P. B. GAJENDRAGADKAR HON'BLE MR. JUSTICE K.N.WANCHOO HON'BLE MR. JUSTICE K.C.DAS GUPTA

Civil Appeal No. 502 Of 1963 | 19-12-1963

Wanchoo, J.

1. This is an appeal by special leave against the award of the Industrial Tribunal (III), Uttar Pradesh. A dispute arose between the appellant and its workmen with respect to retaining allowance for the off-seasons of 1954-1959. The appellant is a sugar factory and the major part of its work is seasonal. It appears that the question of retaining allowance to workmen of sugar factories came under consideration for the first time in the year 1948 and on 29 January, 1948, a press communique was issued by the Uttar Pradesh Government on the basis of an agreement in a tripartite conference of Government, employers and workmen by which retaining allowance at a certain percentage of wages was to be paid to certain categories of workmen. This was followed by an order dated 5 July, 1950 by which retaining allowance was allowed to certain other categories of workmen, including clerical staff. This order of 1950 was to be in force for one year in the first instance and the period was to be extended if necessary from time to time. The period however was not extended and the order came to an end after one year. It seems however that though the order of 1950 came to an end, retaining allowance continued to be paid to clerks by sugar factories in Uttar Pradesh in many cases. In the appellant-factory itself it appears that retaining allowance was paid to the clerk up to 1953, though there was some dispute about it which was decided in favour of the workmen. Further it appears that there was a dispute with respect to twenty-six clerks for payment of retaining allowance for the off-season 1953-54 and that dispute was settled before the conciliation officer upon the appellant stating that it had already paid the allowance, though that settlement related to clerks other than those involved in the present appeal except one. Further there is evidence to show that the appellant employed 60 to 65 seasonal clerks and that to about half of them retaining allowance has always been paid. The present dispute was raised in

respect of the other half of the seasonal clerks numbering thirty-two who were not paid retaining allowance. The respondents contended that there was no justification for the employer to discriminate between clerks and clerks and pay the allowance to half of them and not to the other half, for it is not in dispute that the thirty-two clerks on whose behalf the dispute was raised also came and joined the appellant-factory at the beginning of the next season during the years in dispute. The respondents in this connexion relied on the Government order of 1950 and another Government order of 1957 and lastly on the practice in this factory on the basis of the facts set out above. The appellant on the other hand contended that the respondents were not entitled to any retaining allowance under the Government orders of 1950 and 1957. It was also contended that it was entirely at the option of the appellant to pay retaining allowance to clerks and it could in the exercise if that option pay the allowance to such clerks as it liked and not to others. The appellant also placed reliance on a decision of this Court in Ganesh Sugar Mills, Ltd., v. Their workmen (Civil appeal No. 122 of 1959, decided on 30 March 1960).The questions that arose before the tribunal were :

(1) whether clerks were entitled to retaining allowance under the Government order of 1950;

(2) whether they were entitled to such allowance under the Government order of 1957, and

(3) whether they were entitled to such allowance on any other ground.

2. In view of the decision of this Court in Ganesh Sugar Mills, Ltd. v. Their workmen (vide supra), the tribunal rightly held, that it was not open to the clerks to base their claim for retaining allowance on the Government order of 1950 for that order was in force only for one year and was never renewed. It also seems to have held that the Government order of 1957 did not directly apply to the present case, though it was of the view that, that order did lend strength to the claim of he workmen. In finally came to the conclusion that the employers even after the expiry of the life of the Government order of 1950 had been paying retaining allowance to clerks and further that there was no reason why only some clerks should be paid retaining allowance and others. It

therefore held that the clerks concerned in the present appeal were entitled to retaining allowance at the rate of 50 per centum of their consolidated wages for the off-seasons 1954-59 less payments already made. Thereupon the appellant obtained special leave from this Court and that is how the matter has come up before us.

3. We are of opinion that the appeal has no force. There is no doubt that in view of the decision of this Court in Ganesh Sugar Mills case (vide supra) the respondents cannot rely on the Government order of 1950. It is also clear that the Government order of 1957 has no direct bearing on the question of retaining allowance to clerks. But the question still remains whether in view of what has been happening in the sugar factories in the neighbourhood generally and in the appellant-factory itself, the thirty-two clerks with whose case we are concerned are entitled to retaining allowance. The evidence shows that in Balrampur and Babhnan sugar factories, which in the neighbourhood, all clerks were paid retaining allowance for the off-seasons 1954-1959 at the rate of 50 per centum of the consolidated wages. The evidence further shows that even though the Government order of 1950 expired after a year, retaining allowance continued to be paid in this factory also for at lest three years thereafter and in one year the appellant itself stated before the conciliation officer with respect of off-season 1953-1954 that it had paid the amount. Thereafter the evidence undoubtedly shows that the appellant did not pay retaining allowance to all clerks, even though it is clear that it paid the allowance to about half the number of clerks. No responsible witness, however, appeared on behalf of the appellant before the tribunal to explain why and how the appellant paid retaining allowance to half of the seasonal clerks and not to others. No justification was put forward on behalf of the appellant for making this discrimination in this matter between the same categories of clerks who rejoined the appellant-factory year after when the new season began. We can see no warrant for making this discrimination in the matter of retaining allowance between one seasonal clerk and another, and as the appellant was admittedly paying about half of the seasonal clerks year after year it must be held that the other half of the seasonal clerks is equally entitled to the retaining allowance. On the evidence produced in the case the tribunal has found that payment of retaining allowance has become an implied term of the contract; and we are unable to hold that this finding is erroneous. The appeal therefore fails and is hereby dismissed with costs.