SUPREME COURT OF INDIA

Burhanpur Tapti Mills Ltd.

Vs.

Burhanpur Tapti Mills Mazdoor Sangh

C.A.No.1093 of 1963

(P. B. Gajendragadkar, C.J.I., K. N. Wanchoo and M. Hidayatullah, JJ.)

05.11.1964

JUDGEMENT

HIDAYATULLAH, J.:

1. In this appeal by special leave the only question is whether the Industrial Court, Madhya Pradesh, Indore erred in introducing by its award dated December 29, 1962 a scheme of gratuity in the Burhanpur Tapti Mills Ltd., the appellant before us. The Burhanpur Tapti Mills Mazdoor Sangh (respondent) which represents the workers in the Company gave a notice of change under S. 31(2) of the Madhya Pradesh Industrial Relations Act, 1960 demanding a scheme of gratuity. The Company did not accept the demand and the Sangh forwarded under the Act to the Conciliator a statement of its case. The conciliation proceedings failed and the Sangh made a reference under S. 52 of the Act to the Industrial Court submitting its demand as follows :

"(1) Whether there is a case for awarding the introduction of the Scheme of gratuity to the employees of the Burhanpur Tapti Mills Ltd., Burhanpur.

(2) If so, whether the Scheme of gratuity as demanded by the representative union or some other adequate scheme of gratuity be granted. "

The case of the Sangh was that the financial condition of the Company was quite sound, that the textile industry in general and this Company in particular, had good prospects and that the Company was in a position to give this retiring benefit. The Sangh suggested a scheme into which it is not necessary to go. The Company resisted the demand and submitted that it suffered heavy losses in previous years and its profits were small except in the years 1960-61 and 1961-62 which were boom years for textile industry, that the financial condition of the Company was not sound and that it had no profit-making capacity. The Company contended that the demand of gratuity in addition to the statutory retrenchment compensation and the statutory provident fund which already existed was not justified. The Company further contended that in this region schemes of gratuity were generally not in vogue. The rival parties filed many documents. Some oral evidence was also given on the side of the Sangh. The Industrial Court overruled the contention of the Company and framed a scheme for gratuity holding that the burden would not be more than Rs. 50,000 to Rs. 60,000 a year and that the financial condition and the stability of the Company justified the introduction of a scheme in common with the Indore-Malwa region Mills.

2. In this appeal Mr. Setalvad contended that the Mill was old and all its machinery needed to be

replaced. He submitted that the Company was required to borrow large sums of money from the National Industrial Development Corporation and the Madhya Pradesh Financial Corporation, and that its indebtedness was growing and its profits were falling and it had no capacity to bear the additional burden of the gratuity scheme. He pointed out that the Company was already contributing to the provident fund and was paying 4 per cent of the wages as annual bonus. He submitted that the Industrial Court had made glaring mistakes in appraising the financial condition of the Company and contended that if industry-cum-region basis were applied the Company should be compared with mills in the old Madhya Pradesh region and not with those in the Madhya Bharat region. The latter, according to him, flourished in the former Indore State because there was no Income-tax and the general level of taxation was also low. He contended that the contribution to the provident fund was all that could be provided and that there was no capacity to arrange for further benefits to the workmen.

3. It is no longer open to doubt that a scheme of gratuity can be introduced in concerns where there already exist other schemes such as provident fund or retrenchment compensation. This has been ruled in a number of cases of this Court and recently again in Wenger and Co. v. Workmen, (1963) Supp 2 SCR 862 : (AIR 1964 SC 864) and Indian Hume Pipe Co. Ltd. v. Workmen, AIR 1960 SC 251. It is held in these cases that although provident fund and gratuity are benefits available at retirement they are not the same and one can exist with the other. It is further pointed out that the Provident Funds Act, 1952, which is generally followed in such concerns, provides merely for a minimum benefit to which an employee is considered entitled and does not bar other benefits. It is laid down that where more than one scheme is demanded it is necessary to bear in mind that all existing retiring benefits must be considered together in judging of the employer's ability to, undertake fresh burdens.

4. We may here add that it is wrong to think of such a scheme as a mere burden and as of no benefit to the employer. It may be admitted that such appears at first sight to be so. But this concept of gratuity is not accurate. A scheme of gratuity and a scheme of pensions have much in common. Gratuity is a lump sum payment while pension is a periodic payment of a stated sum. They are both "efficiency devices" and are considered necessary for an "orderly and humane elimination" from industry of superannuated or disabled employees who but for such retiring benefits would continue in employment even though they function inefficiently. The voluntary retirement of an inefficient or old or worn out employee on the assurance that he is to get a retiral benefit leads to the avoidance of industrial disputes, promotes contentment among those who look for promotions, draws better kind of employees and improves the tone and morale of the industry. It is beneficial all round. It compensates the employee who as he grows old knows that some compensation for the gradual destruction of his wage earning capacity is being built up. By inducing voluntary retirement of old and worn out workmen it confers on the employer a benefit akin to the replacing of old and worn out machinery. An indirect saving also results when workmen at the top of the wage scales retire and their place is taken by more energetic workman at lower scales. In this connection we cannot compare compensation for retrenchment and provident fund on the one hand with gratuity or pension on the other. Compensation for retrenchment is solatium for premature termination of employment. Contribution to the provident fund is designed to induce thrift so that the employee may lay by from his present earnings a portion for a rainy day or for his old age. As the workman cannot be expected to spare very much, regard being had to the gap between what he earns and what he must spend, the employer is expected to make a contribution. Gratuity is a retiral benefit of a very different kind, because it is earned by giving service. The existence of any one of the three schemes, therefore, does not obviously overlap any of the other two. They can all exist together, provided the financial position justifies such a course.

5. Now it has been laid down by this Court that there are two general methods of fixing the terms of a gratuity scheme it may be fixed on the basis of industry-cum-region or on the basis of units. Both systems are admissible but regard must be had to the surrounding circumstances to select the right basis. Emphasis must always be laid upon the financial position of the employer and his profit-making capacity whichever method is selected. In the present case there is a general scheme of gratuity in the textile mills of the region and no evidence has been furnished that there is any other textile mill in this region where the scheme does not exist. The mills situated at distant places like Rajnandgaon and Raigarh cannot furnish a true guide because conditions of labour and the prospects of industry vary in units far removed to a far greater extent than in units which lie dose together. This Company is not being singled out for in novation but is being made to follow the others in providing the scheme. In awarding the gratuity scheme the Industrial court was not going against the principle which requires that the matter should also be considered, where possible, on an industry-cum-region basis.

6. We have next to see whether the Industrial Court was right in appraising the financial condition and the profit-making capacity of the Company. A scheme for gratuity no doubt imposes a burden on the finances of the concern but the pressure is ex facie distributed over the years for it is limited to the number of retirements each year. The employer is not required to provide the whole amount at once. He may create a fund, if he likes, and pay from the interest which accrues on a capitalised sum determined actuarially. That is one way of providing the money. Ordinarily the payment is made each year to those who retire. To judge whether the financial position would bear the strain the average number of retirements per year must be found out. That is one part of the inquiry. The next part of the inquiry is to see whether the employer can be expected to bear the burden from year to year. The present condition of his finances, the past history and the future prospects all enter into the appraisal of his ability.

7. The Industrial court in this case properly looked into the finances going as far back us 1945-46. The clear finding is that the gross profits during the period 1945-46 to 1961-62 (before excluding amounts transferred to the depreciation fund) amounted to Rs. 93,73,441. It found four years in which there was loss but this loss totalled only Rs. 11,47,451. A portion of the profits in each year was transferred to the depreciation fund. The amount so transferred is over Rs. 37,00,000. The industrial Court, however, made a mistake for the year 1947-48 and took Rs. 20,000 as transferred to the depreciation fund in that year whereas the correct amount was Rs. 2,90,000. The entry next below appears to have been read by mistake. This, however, makes only a slight difference because it does not depress the profits unduly. Even after deducting this extra amount, the net profits during this period stand at Rs. 67,00,000. It was contended before us that the Industrial Court had not taken into account a further sum of Rs. ll,84,629 in the year 1956-57 which was set apart as depreciation for the years 1953-54 to 1955-56 to make up for inadequate provision for depreciation in those years. Even if one were to take this further sum into account the profits still stand at Rs. 56 lakhs. It is obvious that in providing for depreciation to the tune of Rs. 37 lakhs the company has to that extent, made provision from its earnings. That is an amount gained because it provides for replacement of old machinery by new and this may eventually lead to increased income because improved machinery means greater production and more sales.

8. It was contended before us that the Company had to borrow a sum of Rs. 45 lakhs from the two Corporations already mentioned. The Company previously had issued debontures amounting to Rs. 12 lakhs and this fresh borrowing enables it to redeem the debentures. The net indebtedness is, therefore, not Rs. 67 lakhs but only Rs. 45 lakhs. The amount now borrowed is to be repaid in instalments and the yearly payments do not exceed Rs. 6 lakhs. The burden also becomes less and

less as time passes because principal and interest get reduced. We have not been shown whether any repayments have been made. By reason of the loans the Company is in a position to renew at least 1/3rd of its machinery. The prospects therefore are not gloomy at all.

9. It was argued that there were two boom years and the Company made unduly large profits in those years and we must not consider those years as representing the average years. It is, however, dear that the Company was able to lay by a general reserve of Rs. 15 lakhs in addition to the depreciation fund and has paid handsome dividends. It has even paid a sum of Rs. 1,37,000 as donations. The burden of the gratuity is not likely to be too much. The payment each year is not likely to be as high as Rs. 50,000 to Rs. 60,000 a year which is the amount determined by the Industrial Court. This Company has no age of superannuation, and taking the age of 60 years as the age at which gratuity would ordinarily be claimable the burden cannot be in the neighbourhood of Rs. 50,000 to Rs. 60,000. The average wage is Rs. 54 per month and the number of workmen employed in the Mill is 3189. Of these, those above the age of 50 are only 385, i.e. about 8 per cent. It is unlikely that all these workmen would retire together. Workmen who normally retire per year are not more than 2 to 4 per cent of the entire personnel and looking to the proportion between 385 and 3189 it is reasonable to think that in this Company the average rate of retirement would not go beyond 3 per cent and would rather be nearer 2 per cent than 3 per cent. Applying the calculations adopted by the Tribunal the amount required for the gratuity scheme would not be more than 20 to 30 thousand rupees in any year. In our opinion, the fact that the company has a large general reserve, that it has been able to transfer nearly Rs. 37 lakhs to the depreciation reserve and that it is presently in a position to renew a great part of its old and worn out machines and that the indebtedness is likely to be dissolved by easy instalments and looking to the profits it has been able to make, we are satisfied that this Company must fail in line with similar industrial in this region in providing a scheme for gratuity. The Industrial court was, therefore, right in ordering this Scheme. We have seen nothing in the scheme which merits alteration. The appeal, therefore, fails. It will be dismissed with costs,

Appeal dismissed.

</html