Motipur Zamindari Company Private, Limited, and Another

v.

Their Workmen and Others

(Supreme Court Of India)

HON'BLE JUSTICE P. B. GAJENDRAGADKAR (CJI)

HON'BLE JUSTICE K. N. WANCHOO

HON'BLE JUSTICE M.HIDAYATULLAH

HON'BLE JUSTICE V.RAMASWAMI

Civil Appeals Nos. 110-112 of 1964 | 31-03-1965

Gajendragadkar, C.J.

1. These three appeals arise out of an industrial dispute between the appellant, the management of Motipur Zamindari and another and their workmen. Six points of disputes were referred to the industrial tribunal for its adjudication. After hearing the parties the tribunal made its award. Aggrieved by the said award both the employer and the workmen have come to this Court by special leave. Appeals Nos. 110 and 112 of 1964 are preferred by the employers, whereas Appeal No. 111 of 1964 has been preferred by the workmen.

The points in dispute between the parties were these :

"(1) Whether the workmen be allowed weekly rest day, leave and holidays ? If so, what should be the amount and the procedure for granting the same ?

(2) After what period and under what conditions a workman should be made permanent ?

(3) What should be the wage of each of the categories of workmen? Whether a time-scale of wages with provision for annual increment be provided for the

workmen ? What should be the rate of payment to the loading mazdoors for loading cane and such other purposes?

(4) Whether a scheme of provident fund and retirement gratuity should be introduced? If so, what should be the scheme?

(5) Whether Anchit Roy and Raghunandan Singh, two watchmen, be reinstated or/and otherwise compensated?

(6) Whether normal workload be fixed for each individual and group of workmen for different kinds of work? If so, what should be the workload?"

2. The learned Additional Solicitor-General has fairly not pressed his appeals in respect of issues (1), (3), (4) and (5). He wanted to argue the question about the fixation of age which was covered by point (3) and he stated to us that the workmen also challenged age fixation of wage from that point of view. We then intimated to the learned counsel appearing for both the parties that that was a matter of fact and we did not propose to interfere with the conclusion of the tribunal on that point. So issue (3) also does not remain to be considered in the employers' appeals.That leaves the appeal by the workmen. In this appeal Sri Roy has urged that the tribunal was in error in respect of one condition introduced by it in the scheme of gratuity framed by it. This is condition (4). This condition provides that no gratuity shall be payable to a workman dismissed for misconduct involving moral turpitude. Sri Roy contends that the introduction of this condition is inconsistent with the principles laid down by this Court in Garment Cleaning Works v. Its workmen [1961 - I L.L.J. 513]. In that case this Court has held that gratuity is not paid to an employee gratuitously or merely as a matter of boon, but is paid to him for the service rendered by him to the employer. Consequently he should not be wholly deprived of the benefit thus earned by long and meritorious service even thought at the end of such service he might have been found guilty of misconduct which entailed his dismissal. In our opinion, the contention raised by Sri Roy in respect of this condition raised well-founded. We would, therefore, direct that instead of the said clause another clause should be substituted in the scheme of gratuity. The provision should be that while paying the gratuity to a workman who is dismissed for misconduct only such amount should be deducted from the

gratuity due to him in respect of which loss may have been caused by the misconduct of the employee.

3. The other contention which Sri Roy has raised on behalf of the workmen is in regard to the order passed by the tribunal holding that the dismissal of the employee Anchit Roy was justified. It appears that this employee was transferred and he refused to obey the order of transfer. The tribunal has found that the order of transfer did not amount to a punishment nor was it passed to victimize the employee. It appears that it was urged before the tribunal that the transfer in substance directed the employee to go to a lower post. This contention also has been rejected by the tribunal. Sri Roy contends that the finding made by the tribunal on this issue is not supported by any evidence on the record and he urged that in respect of this dismissal no evidence has been led by the employer. The only document which they produced before the tribunal was an envelope which was sent to the employee by registered post and it was suggested by the employer that the employee refused to take delivery of the said letter. Sri Roy contends that in view of the fact that the workman has denied that he refused to take the registered letter the employer should have proved that fact by independent evidence. We are not impressed by this argument. But apart from the question as to whether the employee refused to take delivery of the envelope, it is plain that the employee who gave evidence has admitted that on 8 April, 1957 he was transferred work as Jirat chaukidar at Motipur centre and he did not go.

4. Therefore, the contention that there is no evidence to support the finding of the tribunal that the employee refused to obey the order of transfer is plainly misconceived. Whether or not the evidence given by the employee justified the said conclusion would be a matter of appreciating evidence and this Court in dealing with industrial appeal under Art. 136 ordinarily does not enter into question of fact. In our opinion, therefore, there is no substance in the argument urged by Sri Roy, that the finding made by the tribunal in respect of the dismissal of this employee is invalid in law.There is one more point which Sri Roy has urged before us and that is in regard to the date from which the award has been ordered by the tribunal to come into force. It does appear that though the reference in the present case was made as early as in 1957 the award was ultimately pronounced in 1963. Sri Roy contends that in view of the fact that the proceedings before the tribunal took such a long time it would be unfair not to direct the payment of the wages as devised by the tribunal from the date of the

reference. It is true that these proceedings had taken an unduly long time, but we do not see any justification for interfering with the order passed by the tribunal. Normally it is for the tribunal to consider from what date the award should take effect and having regard to the fact that the workmen in question are employed in agricultural labour the tribunal thought that the operation of the award should begin from the date when the award was pronounced. In this view of the matter, we are reluctant to interfere with the direction of the tribunal.

5. The result is that the appeals preferred by the employers are dismissed whereas the appeal preferred by the workmen is allowed partly inasmuch as one condition introduced in the gratuity scheme has been modified. There will be no order as to costs.