Calcutta Insurance Co. Ltd.

Vs

Their Workmen

Civil Appeal No. 1135 of 1965

(V. Bhargava, G. K. Mitter JJ)

06.02.1967

JUDGMENT

MITTER, J. –

This is an appeal by special leave from the award of the Industrial Tribunal, Dhanbad dated April 25, 1964. No less than 13 issues were referred to the Tribunal under section 10(1)(d) of the Industrial Disputes Act, 1947 for adjudication. Before this Court, however, the company which has come up in appeal limited its grievance against the award on only a very few of them. These are :-

> 1. Scales of pay 2. Dearness allowance 3. Adjustment in the scales 4. Privilege and sick leave, and 5. Gratuity.

In order to appreciate to proper scope of the dispute between the parties and the extent to which amelioration of the conditions of service of the workmen with regard to the matters mentioned above was justified, it is necessary to refer, in brief, to the past history of the company and its prospects as they have come to light before us. This is all the more necessary because learned counsel for the appellant made a very strong comment on the Tribunal having fixed the scales of pay, the dearness allowance etc., at considerably higher figures than those prevalent without estimating the impact thereof on the finances of the company. The Tribunal, as a matter of fact, expressly mentioned in its award that it had before it no estimates as to the burden which the award would bring about in the finances of the company. The Tribunal had before it the balance sheets and the profit and loss accounts of the company from the year 1958 to the year 1962. In order to be able to determine whether the company was in a position to bear the additional burden, we requested counsel for the parties to produce before us the balance sheets and the profit and loss accounts of the company for the subsequent years and these were made available to us. We thus had an opportunity of judging the financial condition of the company for the years 1963, 1964 and 1965 to find out for ourselves whether the burden was such that the company could bear if we were of the view that the increase in the scales of pay and the dearness allowance awarded by the Tribunal were not unreasonable Mr. Sen, learned counsel for the appellant, stated more than once and even in the early stages of the opening of the appeal that his client did not intend to take exception to the increase in the scales of pay and the dearness allowance but the real grievance of the company was regarding the adjustment or fitment of the workmen in the new scales of pay and dearness allowance which, accordance to him, would greatly increase the burden of the company. Mr. Sen further argued that in all such awards it was usual to fit the workers in the new scales of pay and dearness allowance giving them one or two lifts in the new scales; but, what the Tribunal had done in this case was to fit the workmen in the new scales on the basis of the total length of their service with the company. The argument put in this form certainly suggests that the Tribunal had transgressed the usual limits

of such increases and we therefore have to find out whether there are any exceptional circumstances in this case which justify the Tribunal in granting the increases it did and whether the finances of the company warrant such increases.

There is no doubt that the appellant is one of the smallest units of the insurance companies undertaking fire, marine and miscellaneous insurance work in India. This is borne out by the Indian Insurance Books for the years 1963 and 1964 to which our attention was drawn by learned counsel. The company was founded in the year 1923 and was doing exclusively life insurance business until 1948. Thereafter it started general insurance business on a very small scale. After the passing of the Life Insurance Corporation Act of 1956 and the taking over of the life insurance business of the company by the Corporation, its activities were very much reduced. The paid-up capital of the company was only Rs. 6,54,190/-. At the end of the year 1961 it was left with a loss of Rs. 1,91,472.00 as disclosed by its balance sheet as at 31st December 1961. It does not appear that the company had been able to declare any dividends to its shareholders for some years. As a result of the working in the year 1962, it was able to wipe out the loss which was being carried forward and to propose a dividend to the shareholders at the rate of 30 paise per share totalling Rs. 19,645/-. The balance sheet as at 31st December 1962 disclosed a general reserve of Rs. 1,50,000/- and an investment reserve of Rs. 68,000/-. For the year ending 31st December, 1962 the company earned a profit of Rs. 2,33,052.33 which enabled it to wipe out the loss. The annual report and the balance sheet for the year ending 31st December, 1963 show that the profits for the year including the balance brought forward from the previous account amounted to Rs. 1,91,025.86 making provision for taxation amounting to Rs. 98,400/-. There was thus a surplus of Rs. 92,718/-. Out of this the company transferred Rs. 15,000/- to general reserve, Rs. 5,000/- to dividend equalisation fund, Rs. 10,000/- to the gratuity fund and Rs. 40,000/- for payment to shareholders. All this left a sum of Rs. 22,718/- to be carried forward to the next year. The report for the year ending 31st December, 1964 shows a considerable improvement in the company's working. The profits for the year including the balance brought forward amounted to Rs. 2,62,198/-. The provision for taxation amount to Rs. 97,600/- leaving a surplus of Rs. 1,64,598/-. This was sought to be disposed of as follows :-

> # Rs.(a) Transfer to general reserve .. .. 83,000/-(b) Transfer to dividend equalisation fund 5,000/-(c) Transfer to gratuity fund .. .. 10,000/-(d) Transfer to investment reserve .. 19,000/-(e) Provision for payment to shareholders 39,045/- The balance to be brought forward was 8,553/-##

The report for the year ending 31st December, 1965 is even better than that for the year ending 31st December, 1964. The total profit of the company including the balance of Rs. 8,553/- came to Rs. 3,23,630/- out of which provisions for taxation was Rs. 1,03,000/- leaving a surplus of Rs. 2,20,630/-. The company sought to dispose of this in the following manner :-

> # Rs.(a) Transfer to general reserve .. .. 70,000/-(b) Transfer to dividend equalisation fund 5,000/-(c) Transfer to gratuity fund .. .. 10,000/-(d) Transfer to investment reserve .. .. 80,000/-(e) Dividend to shareholders .. .. 52,060/-##

It will therefore be seen that during the years 1963-65 the company was in a position to increase its general reserve by Rs. 1,68,000/-. It built up an investment reserve of Rs. 99,000/- and was transferring Rs. 5,000/- per year to a dividend reserve. It also made a provision of Rs. 10,000/- each year for payment of gratuity which we shall have to consider later.

The company had, at all material times, about 60 workmen employed at the registered office at

Calcutta and its branches at Delhi, Madras, Kanpur, Meerut and Dhubri. Besides this, the company also had 100 persons described as field staff. In 1957 there were in existence certain grades and scales of pay for different categories of employees at the Head Office and branch offices. The employees were also getting some dearness allowance as also bonus at the rate of one month's basic wage at the time of the Durga Pooja festival. The field staff had no pay scale. As soon as the company engaged itself in exclusive general insurance business and its prospects seemed to brighten up, the employees presented a charter of demands. Ultimately, the company and its workmen entered into an agreement on April 29, 1958 which was to be in force for five years commencing from January 1, 1958. The employees were divided into two categories, viz., (1) filing assistants and sub-staff and (2) assistants. The scales of the former were to be Rs. 20-2-32-3-50-EB-5-75 while that of the latter was Rs. 55-5-75-7/8-150-EB-10-200-EB-15-305. There was to be no adjustment in salary for fitting in the grade. The sub-staff were to be paid dearness allowance at Rs. 38/- p.m. at a flat rate; filing assistants were to be paid dearness allowance at Rs. 37/- p.m. and assistants at Rs. 55/- p.m. The bonus was to remain as before as was the case with provident fund. The agreement provided for gratuity as follows :

> "Gratuity shall be payable where -
>
> (a) an employee who has been in continuous service for not less than 15 years, and
>
> (i) his services are terminated for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action; or
>
> (ii) he voluntarily resigns from the service.
>
> (b) An employee -
>
> (i) dies while he is in service, or
>
> (ii) retires from service on his reaching superannuation, or
>
> (iii) his services are terminated as a measure of retrenchment or consequent on the abolition of his post;

The employee or his heirs, as the case may be, shall be paid on such termination, retrenchment, resignation or death gratuity which shall be equivalent to one month's basic pay for every completed year of service or any part thereof in excess of six months subject to a maximum of fifteen months' basic pay....."

The leave rules were to be left as before. There was an attempt at conciliation which however came to nothing and ultimately the matter was referred to the Industrial Tribunal. The Tribunal after taking evidence, both oral and documentary, and referring to the accounts of the company from 1958 to 1962 concluded that the company was making profit at least since 1961 and was in a prosperous condition with the capacity to bear additional financial liability if the pay scales and other demands of the union were allowed to some reasonable extent. As regards the pay scales and dearness allowance, the same were increased by the award as follows :-

> # Scale of payGrade A : Sub-staff Rs. 30-2-40-3-70-EB-5-95 (20 years)Grade B : Filing Rs. 40-3-70-4-90-EB-5-135 Assistants. (24 years)Grade C : Assistants Rs. 75-5-95-8-135-EB-15-270-EB- 25-320 (22 years).##

The dearness allowance of subordinate staff was increased to Rs. 40/- flat rate per month; that of filing assistants to Rs. 50/- per month and that of assistants to Rs. 70/- per month. With regard to the adjustment in the scales, the Tribunal concluded that the length of service was to be the real basis on which adjustment in the new revised scales of pay would be made and the employees for whom there as an existing pay scale which was being revised and increased will be pulled up to fit in the revised scales of pay taking into account their length of service.

We were handed up certain charts by counsel on both sides. It is admitted that the paid-up capital of the company and its premium income are comparable only to All India General Insurance Co. and Co-operative General Insurance Company out of the Companies mentioned in the Indian Insurance Year Books. The free reserves of three companies were also comparable as also the paid-up capital and reserve. The scales of salary as fixed by the Tribunal in this case are also comparable in those in the All India General Insurance Company and Co-operative General Insurance company. The position of these three companies according to chart made over to us is as follows :-

> # Comparative Chart to show salaries receivable at different stages in three following Companies as compiled from figures at pages 120 and 40 of the Paper Book.---------- ---------- After After After AfterSalary Name of Company 5 10 15 20 years years years years---------- ---------- Rs. Rs. Rs. Rs.Grade A All India General 40 50 65 80 Co-operative General 45 60 78 90 Calcutta Insurance 40 55 70 95Grade C All India General 100 140 190 242 Co-operative General 110 160 210 260 Calcutta Insurance 103 150 225 320----------##

Mr. Sen also handed up another chart which showed that the total increase in the basic salary of all the employees of the company as a result of the award would be Rs. 853/- per month while the total increase in dearness allowance per month would be Rs. 889/- As a result of the increase in the provident fund contribution of the company to 8 1/3% the total increase of burden imposed on the company thereby would be Rs. 340/- per month. In other words, these three increases would result in the outgoing being augmented by Rs. 2,000/- p.m. or Rs. 24,000/- annually. It is to be borne in mind that if the company were to pay to the staff an additional Rs. 24,000/- per year it would save approximately income-tax of Rs. 12,000/- per year. The total burden of the company would therefore be only Rs. 12,000/- per year or Rs. 1,000/- per month. In view of the general improvement in the working of the company for the three years after 1962, there is no reason to hold that the impact of the additional burden on the company by the award will be such that it would be difficult for it to meet. After all if the company's position keeps on improving, there is no reason why the men who work for it should not come in for a share of the balance of the profits in common with the share-holders of the company. Of course, this does not mean that any increase in the scales of pay and dearness allowance will be upheld because the company is showing a profit. We have to take into consideration the scales of pay and dearness allowances prevalent in other companies of a comparable status as also keep in mind the present-day increase in prices all round and the difficulty which men with slender means have to face in order to make both ends meet (if they can be met at all). We find that the scales prevalent in this company were unusually low compared to those of other comparable concerns before the date of the award. We cannot also ignore the fact that unless the length of service of the workman is taken into consideration great hardship will be inflicted on the existing workmen compared to the salary and dearness allowance which new workers will get. It cannot be disputed that on the old scale a member of the sub-staff who has been in the company for five years would get a basic salary of Rs. 30/- per month if his length of service was to be ignored. This would be the same as that of a new entrant. By fitting the

workers in the new scales of pay taking into account their length of service, the company would be rehabilitating them to a certain extent even though they may have suffered in the past on account of the inadequacy of the scales of pay and dearness allowance. The pay and dearness allowance of the workmen as a result of the award would be comparable to those workmen working in other comparable concerns. The financial burden can without any difficulty be met by the company in view of its improved working.

We may now take note of a few decisions on the question of fitting in workmen in the new scales of pay introduced by the employers. As early as 1952 the Labour Appellate Tribunal observed in Bijli Mazdoor v. U.P. Electric Co. ([1952] L.A.C. 475, 482) that

> "Normally, in question of 'fitting in' length of service of the employees is taken into account and in the absence of any evidence that another uniform rule was followed by the Company, we must hold that length of service is the only criterion available and to be adopted in laying down the rules of 'fitting in'."

It was not disputed in that case that length of service had not been taken into consideration in making the adjustments to the new rates. In that case the Regional Conciliation Board had framed certain rules one of which was that an employee should be allowed one increment of the proposed reorganisation scheme for every three years of service subject to a maximum of five increments on the minimum of the new grade on a particular designation of the reorganisation scheme or the salary which he was drawing on September 30, 1946 whichever may be higher.

The Tribunal in that case thought that there were two omissions in the rule which it sought to rectify, one by way of a proviso and the other by way of an explanation. The proviso was that an employee should not get more than the maximum of the new grade in which he was fitted in and the explanation was "in calculating the length of service, the period during which the employee was serving under the designation of the new grade to which he is fitted in, is only to be reckoned and not the entire period of the service in the company; that is to say, his service in other designations will not be reckoned in calculating the increments according to this rule."

Mr. Sen relied on the explanation formulated by the Tribunal and contended that we should guide ourselves by the same. We do not think that that should be the invariable rule as the following decisions of this Court will show. In French Motor Car Co. v. The Workmen ([1963] Supp. 1 S.C.R. 16 : A.I.R. 1963 S.C. 1327) it was observed :

> "..... generally adjustments are granted when scales of wages are fixed for the first time. But there is nothing in law to prevent the tribunal from granting adjustment even in cases where previously pay scales were in existence; but that 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."

It is necessary to bear in mind that in that case it was found that the particular concern was already paying the highest wages in its own line of business, but nevertheless it was said that industrial courts would be justified in looking at wages paid in that region in other lines of business which were as nearly similar as possible to the line of business carried on by the concern before it. What are the factors to be taken note of in considering what adjustments should be given in fixing wage

scales were considered at some length in Hindustan Times v. Their Workmen ([1964] 1 S.C.R. 234). It was there found that the wage scales of the workmen had remained practically unaltered for almost 12 years during which the cost of living had risen steeply. The Tribunal further found that the company had been prospering and had financial stability. This Court examined the balance sheets and the other materials on record and agreed with the conclusion arrived at by the Tribunal. In Greaves Cotton & Co. v. Their Workmen ([1964] 5 S.C.R. 362) the question came up for consideration once more before this Court. Referring to the earlier cases it was said that the question whether adjustment should be granted or not was always one depending upon the facts and circumstances of each case. The Court found on a comparison of the scales of pay of the appellant concern and those prevalent in other concerns that the pay scales were not high as compared to pay scales in comparable concerns from 1950 and if anything, they were on the lower side. The Court also found that in the appellant's concerns the first rate of increment was generally on the lower side and lasted for a longer period than in the case of comparable concerns. In these circumstances the award of the Tribunal deciding to give increments by way of adjustments was upheld although as a result thereof the employees of the appellant's concerns would be getting a pay packet which would stand comparison with some of the best concerns in the region. In Workmen of Balmer Lawrie & Co. v. Balmer Lawrie & Co. ([1964] 5 S.C.R. 344) it was said :

> "If the paying capacity of the employer increases or the cost of living shows an upward trend..... or there has been a rise in the wage structure in comparable industries in the region, industrial employees would be justified in making a claim for the re-examination of the wage structure and if such a claim is referred for industrial adjudication, the Adjudicator would not normally be justified in rejecting it solely on the ground that enough time has not passed after the making of the award, or that material change in relevant circumstances had not been proved. It is, of course, not possible to lay down any hard and fast rule in the matter. The question as to revision must be examined on the merits in each individual case that is brought before an adjudicator for his adjudication."

We refer to these observations in order to negative the contention put forward by Mr. Sen on behalf on the appellant that it was only in 1958 that the company and its employees had entered into an agreement with regard to all these matters and the Tribunal should not have upset that agreement merely because the employees thought that their scales of pay were low and required re-adjustment. The prospects of the company in 1958 were far from bright as the earlier passages in this judgment will show. As a matter of fact the company was incurring losses. It was only in 1962 that the company turned the corner and its prospects have been brightening ever since. Taking into consideration the fact that the wage scales and dearness allowance were low even as compared to comparable concerns and the established financial capacity of the employer to bear the burden, we do not feel justified in upsetting the award of the Tribunal or introducing any modification thereto on the question of adjustment of the workmen into the new scales.

On the question of gratuity the Tribunal noted that there was no difference between the parties regarding the rate at which it should be paid and the only dispute between them was as regards the period of completed service after which it should be given. The Tribunal further noted that the company had ultimately agreed that the maximum proposals of the company as modified and given in Ex. W-16 should be given effect to as mentioned by the Conciliation officer. The Tribunal awarded that the company should pay to its employees who were permanently and totally disabled as duly certified by a physician appointed by the company or in case of death or in case of retirement, and confirmed service on month's salary for a year of service up to a maximum of

fifteen months' basic pay.

The main attack against the award on this point was that the Tribunal should not have provided for payment of gratuity on resignation by the employee after only five years' service. It was argued that this would be an incentive to a workman to leave the service of the company after five years and seek employment elsewhere. On the question of retirement also it was contended that five years was too short a period entitling a workman to gratuity and that the minimum period should have been fixed at 15 years. It was further argued that no gratuity should be payable to a workman in case of his dismissal on the ground of misconduct.

It is therefore necessary to examine the decisions of this Court on this point, for unless a case for revision of the same is made out it is only proper that we should guide ourselves by what has been held by this Court before. As far back as 1956, this Court observed in the Indian Oxygen & Acetylene Co. Ltd. ([1956] 1 L.L.J. 435) that

> "It is now well-settled by a series of decisions of the Appellate Tribunal that where an employer company has the financial capacity the workmen would be entitled to the benefit of gratuity in addition to the benefits of the Provident Fund. In considering the financial capacity of the concern what has to be seen is the general financial stability of the concern. The factors to be considering before granting a scheme of gratuity are the broad aspects of the financial condition of the concern, its profit earning capacity, the profit earned of the concern, its reserves and the possibility of replenishing the reserves, the claim of capital put having regard to the risk involved, in short the financial stability of the concern."

In that case the Court awarded gratuity on retirement or resignation of an employee after 15 years of continuous service, 15 months' salary or wage. The above observations were repeated in Express Newspaper (Private) Ltd. & Anr. v. The Union of India & others. ([1959] S.C.R. 12, 156) It was further observed in that case that gratuity was a reward for good, efficient and faithful service rendered for a considerable period and that there would be no justification for awarding the same when an employee voluntarily resigned and brought about a termination of his service, expect in exceptional circumstances. In express Newspaper ([1959] S.C.R. 12, 156) case it was held that where an employee voluntarily resigned from service after a period of only three years there would be no justification for awarding him a gratuity and any such provision would be unreasonable.

In Garment Cleaning Works v. Its Workmen ([1962] 1 S.C.R. 711) the question which came up for consideration was, whether an award providing for gratuity on retirement or resignation of a workman after ten year's service at ten days consolidated wages for each year's service should be upheld. The contention put forward on behalf of the employer was that the minimum period of service entitling a workman to gratuity should be fixed at 15 years and reference was made to the case of Express Newspapers Ltd. ([1959] S.C.R. 12, 156) It was however said by this Court that the observation in Express Newspapers' case was not intended to lay down a rule of universal application. It was observed that :

> "Gratuity is not paid to the employee gratuitously or merely as a matter of boon. It is paid to him for the service rendered by him to the employer, and when it is once earned, it is difficult to understand why it should necessarily be denied to him whatever may be the nature of misconduct for his dismissal..... If the misconduct for which the service of an employee is terminated has caused financial loss to the

> works, then before gratuity could be paid to the employee he is called upon to compensate the employer for the whole of the financial loss caused by his misconduct, and after this compensation is paid to the employer if any balance from gratuity claimable by the employee remains that is paid to him."

The opinion expressed in that case was that gratuity was earned by an employee for long and meritorious service and consequently it should be available to him though at the end of such service he may have been found guilty of misconduct entailing his dismissal.

In principle, it is difficult to concur in the above opinion. Gratuity cannot be put on the same level as wages. We are inclined to think that it is paid to a workman to ensure good conduct through out the period he serves the employer. "Long and meritorious service" must mean long and unbroken period of service meritoriours to the end. As the period of service must be unbroken, so must the continuity of meritorious service be a condition for entitling the workman to gratuity. If a workman commits such misconduct as causes financial loss to his employer, the employer would under the general law have a right of action against the employee for the loss caused and making a provision for withholding payment of gratuity where such loss caused to the employer does not seem to aid to the harmonious employment of labourers of workmen. Further, the misconduct may be such as to undermine the discipline in the workers - a case in which it would be extremely difficult to assess the financial loss to the employer. It is to be noted that in the last mentioned case this Court did not think fit to modify the award of the Tribunal.

On the financial aspect of a gratuity scheme, we were referred to the case of Wenger & Co. v. Their Workmen ([1963] II L.L.J. 403). There it was observed by this Court that the problem of the burden imposed by the gratuity scheme could be looked at in two ways. One was to capitalise the burden on actuarial basis which would show theoretically that the burden would be very heavy; and the other was to look at the scheme in its practical aspect and find out how many employees retire every year on the average. According to this Court, it was this practical approach which ought to be taken into account. Further, it was held that the award providing for payment of gratuity for a continuous service of two years and more, termination of service for whatever reason except by way of dismissal for misconduct involving moral turpitude, was unduly liberal. This Court ordered deletion of the words 'involving moral turpitude' from the provision of gratuity and directed that for termination of service caused by the employer the minimum period that of service for payment of gratuity should be five years and in regard to resignation, the employee should be entitled to get gratuity only if he had 10 years completed service to his credit.

In British Paints (India) Ltd. v. Its Workmen ([1961] 1 L.L.J. 407) the Tribunal had fixed five years minimum service as the qualifying period to enable a workman to earn gratuity which was payable in case of death or discharge or voluntary retirement on grounds of medical unfitness or resignation before reaching the age of superannuation, retirement on reaching the age of superannuation or termination of service by the company for reasons other than misconduct resulting in loss to the company in money and property. In that case the Court observed that the reason for providing for a longer minimum period for earning gratuity in the case of voluntary retirement or resignation was to see that workmen do not leave one concern after another after putting the short minimum service qualifying for gratuity. It was said that a longer minimum in the case of voluntary retirement or resignation makes it more probable that the workmen would stick to the company where they were working. Ultimately, this Court modified the gratuity-scheme and ordered that in the case of voluntary retirement or resignation by the employee before reaching the age of superannuation, the minimum period of qualifying service for gratuity should be ten years and not five years.

Mr. Sen argued that the scheme of gratuity as framed by the Tribunal involved the setting apart of Rs. 10,000/- per year out of the profits of the company. According to him, the burden was too heavy for the company and without any justification. It must be noted that the provision for setting apart Rs. 10,000/- every year was said to be fixed on actuarial basis and not the practical approach formulated by this Court in the case of Wenger & Co. ([1963] 11 L.L.J. 403). In our view, it is this practical approach which the Court should consider and on that basis the burden would certainly not be anywhere in the region fixed by the company or be such as to be struck down as beyond the financial capacity of the company.

We do however feel that a workmen should not be entitled to any gratuity on resignation only after five years of completed and confirmed service and that in case of resignation this period should be raised to ten years. We also hold, following the principles laid down in the former decisions of this Court, that a workman, who is dismissed for misconduct, should be entitled to receive gratuity only after completion of 15 years of service on the ground that gratuity is a reward for long and meritorious service, and further that, in cases where the misconduct for which the workmen is dismissed entailed financial loss to the company, the company would be entitled to set-off the loss from the amount of gratuity payable. In our opinion the award should also be modified by providing for a ten year qualifying period for gratuity on retirement. Save as above the award as to gratuity will stand.

The privilege leave which the employees were enjoying before the award was 21 days in the year after every 12 months of continuous service which could be accumulated up to a maximum of 45 days and had to be exhausted within six months following the two years during which the leave had been earned; but if the company could not grant leave due to exigencies of business when it was applied for, accumulation was to be allowed up to a maximum of 60 days.

Before the date of the award, sick leave was to be treated as casual leave in the first instance. If the period of leave was in excess of casual leave available, it was to be treated as privilege leave. If sick leave was required in excess of the casual and privilege leaves, it was to be allowed up to a maximum of 15 days for each completed year of service to be accumulated up to three months on full pay and further three months on half pay.

The Tribunal by its award allowed privilege leave up to 30 days in a year with accumulation up to 90 days and sick leave to the extent of 15 days for each year of service up to three months on full pay and thereafter three months on half pay.

Mr. Sen contended that the Tribunal had gone wrong in the matter of fixation of leave and should have guided itself by the West Bengal Shops and Establishments Act, 1963 which applied to the appellant. Section 11(a) of that Act provided that a person employed in a shop or an establishment was to be entitled for every completed year of continuous service, to privilege leave on full pay for fourteen days. Section 11(b) provided that every such person was to be entitled to sick leave in every year on half pay for fourteen days on medical certificate obtained from a medical practitioner in terms of the Act. The proviso to the section laid down that privilege leave admissible under clause (a) might be accumulated up to a maximum of not more than 28 days and sick leave under clause (b) might be so accumulated up to a maximum of not more than 56 days. Section 24 of the Act which came into force in 1963 laid down that nothing in the Act was to affect any right on privilege to which any person employed in any shop or establishment was entitled on the date of the commencement of the Act under any law for the time being in force or under any contract, custom or usage in force on that date if such right or privilege was more favourable to him than any right or

privilege conferred upon him by the Act or granted to him at the time of appointment.

Our attention was also drawn to the Delhi Shops and Establishments Act, 1954 section 22 where of provided that every person employed in an establishment shall be entitled after twelve months of continuous employment, to privilege leave with full wages for a total period of not less than 15 days and to sickness or casual leave with wages for a total period not exceeding 12 days provided that privilege leave might be accumulated up to a maximum of 30 days and sick leave was not to be accumulated.

We were also referred to section 79 of the Factories Act under which every worker who had worked for a period of 240 days or more in a factory during a calendar year was to be allowed during the subsequent calendar year, leave with wages for a number of days calculated at the rate of one day for every 20 days of work performed by him and the total number of days of leave which might be carried forward to a succeeding year was not to exceed 30 days.

Section 78 of the Factories Act laid down that the provisions of Chapter VIII with regard to annual leave etc., were not to operate to the prejudice of any right to which a worker might be entitled under any other law or under the terms of any award, agreement or contract of service. In Alembic Chemical Works Co. v. Its Workmen ([1961] 3 S.C.R. 297), the Tribunal on a reference under section 10(1)(d) had directed that the workmen should be entitled to privilege leave up to three years completed years of service, 16 days per year and up to nine completed years, 22 days per year and thereafter one month for every 11 months of service with accumulation up to three years. The Tribunal had also provided for sick leave at 15 days in a year with full pay and dearness allowance with a right to accumulate up to 45 days.

In appeal to this Court, it was contended that the Tribunal had no jurisdiction to make such an award in view of the provisions of section 79 of the Factories Act. The question was dealt with at length by this Court and the provisions of sections 79, 78 and 84 which enabled the State Government to exempt any factory from all or any of the provisions of Chapter VIII subject to such conditions as might be specified in the order, were examined. According to this Court, section 79(1) provided for a minimum rather than the maximum leave which might be awarded to the worker. The Court further sought to reinforce its conclusion by examination of the amendments to the Act introduced from time to time to show that these always sought to make the provisions more liberal in favour of the workers.

In Rai Bahadur Diwan Badri Das v. Industrial Tribunal, Punjab, ([1962] II L.L.J. 366) the Industrial Tribunal had directed that all the workmen in the press section should be given the same quantum of leave viz., 30 days leave with wages irrespective of the question as to whether they took up employment after 1st July, 1956. The management had modified the leaves rules prior thereto and classified the press workers in two categories : (1) workers who were employed on or before 1st July, 1956 and (2) those who were employed after 1st July, 1956. In respect of the first category benefit of 30 days leave with wages was given while the workers in the second category were to have leave as per section 79 of the Factories Act. It was observed by this Court :

> "Generally, in the matter of providing leave reles, industrial adjudication prefers to have similar conditions of service in the same industry situated in the same region. There is no evidence adduced in this case in regard to the condition of earned leave prevailing in the comparable industry in the region. But we cannot ignore the fact that this very concern provides for better facilities of earned leave to a section of its

> employees when other terms and conditions of service are the same in respect of both the categories of employees. It is not difficult to imagine that the continuance of these two different provisions in the same concern is likely to lead to dissatisfaction and frustration amongst the new employees."

According to this Court, it was not right that there should be discrimination amongst the workers in the same concern.

Unfortunately for us, we have not got any evidence of the provisions leave prevalent in the two concerns which are comparable with the appellant before us, viz., All India General and Co-operative General Insurance Co. but the Tribunal had before it a comparative statement of leave available to employees in some other concerns. In the United Fire and General Insurance Co. privilege leave was allowed for one month in a year with accumulation up to 75 days. In Union Co-operative Insurance Co. it was one month in a year with accumulation up to six months. In the Hercules Insurance Co. Ltd. it was one month in a year simpliciter.

We find ourselves unable to accept the contention of Mr. Sen that the Tribunal could not direct that the employees should have leave in excess of the limits specified in the West Bengal Shops and Establishments Act, 1963. As a matter of fact, the employees were enjoying leave at a rate which exceeded the limits prescribed. Taking all these matters into consideration, we think that the leave rules should be modified to the extent that privilege leave would be allowable at the rate of 30 days for each completed year of service with a right to accumulate the same up to 60 days; and sick leave at the rate of 15 days per year with full pay with right to accumulate the same up to three months.

The award shall stand modified as indicated above and in view of the divided success in this Court, we make no order as to costs.

Award modified.

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