Management, Chitavalsah Jute Mills Ltd.

Vs

Workmen of Chitavalsah Jute Mills

Civil Appeal No. 1627 of 1967

(G. K. Mitter, K. S. Hegde JJ)

02.02.1968

JUDGMENT

HEGDE, J.

This appeal has been brought to this Court by special leave. It arises from the decision of the Industrial Tribunal, Andhra Pradesh, Hyderabad. The only question that arises for decision is whether on the basis of the material on the record there was any justification for framing a gratuity scheme for appellant's staff.

The admitted facts are these : The appellant concern is having about 500 looms. It has a subscribed capital of a little over 35 lakhs. Its built up reserve is over thirty lakhs. In three out of the six years during the period 1960-65 it has suffered substantial losses. Out of the remaining three years, in one year it made a profit of about Rs. 45,000, in another year about Rs. 13,000 and in 1962 over rupees twelve lakhs. The annual expenses of the appellant's concern under the head 'salaries, wages and bonus' are nearly 47 lakhs.

It was found by the tribunal that the appellant concern and the Nellimarla Jute Mills are sister concerns. Both of them are under a single management, viz., M/s. Mcleod and Company, Calcutta. They are located in the same region, the distance between the two being about 25 miles. In Nellimarla Jute Mills a gratuity scheme for the staff is in existence and that in addition to provident fund benefits. Our attention was not invited to any material on record to show that these findings are not correct. In the appellant concern also there is a provident fund scheme for the staff. The appellant in its counter-affidavit filed before the tribunal admitted that it had always been the policy of the management to introduce identical terms of employment for the workmen at Nellimarla and Chitavalsah. From the material before us it is not possible to find out the financial position of the Nellimarla mills. We ascertained from the learned counsel for the appellant that the appellant concern had made a profit of over a lakh of rupees in 1966. The tribunal has found and that finding was not challenged before us that the additional burden to be borne by the appellant as a result of the gratuity scheme framed by it is about Rs. 3,000 per year.

On behalf of the appellant two contentions were advanced in opposition to the proposed gratuity scheme. They are (1) the wage board was unable to recommend a gratuity scheme for the jute industry and hence there was no justification to frame the impugned scheme, and (2) in view of the losses incurred by the appellant during the years 1960-65, no additional burden should have been cast on it by introducing a gratuity scheme.

So far as the Wage Board recommendation is concerned, it pertains to the jute industry as a whole.

After taking into consideration the importance of the jute industry for the national economy and the difficulties currently experienced by that industry, the wage Board thought that it would be inappropriate to compel the industry to introduce a gratuity scheme for its employees. This recommendation relates to the industry as a whole and not to any individual industrial unit. That recommendation cannot be understood as recommending that there should be no gratuity scheme for the employees in any particular unit in that industry. What is true of an industry as a whole need not necessarily be so in respect of a unit therein. That position in law was not disputed by Mr. Gokhale, learned counsel for the appellant Therefore, in considering the appropriateness or otherwise of the impugned scheme, we have to primarily consider its repercussion on the appellant. What is relevant to find out is whether the appellant can bear the additional burden and whether in the circumstances of the case there is justification for throwing that burden on it.

The tribunal has recommended a gratuity scheme for the staff of the appellant after taking into consideration its financial position as well as the fact that in the sister concern i.e., the Nellimarla Mills, such a scheme is in existence. It is no more in controversy that in determining the conditions of service of the industrial workers in any unit, it is necessary to bear in mind the conditions prevailing in similar units in that region. Generally speaking the basis for such a determination is industry-cum-region.

The appellant concern is an economic unit. Jute mills having 300 or more looms are considered as economic units. The appellant has 500 looms. Similarly the Nellimarla Mills have also got 500 looms. As seen earlier, the appellant is a big concern. Its paid up capital is over Rs. 35 lakhs. Its reserve is nearly as much as its paid up capital. This shows that in the past the appellant was a prosperous concern. It is true that it did suffer losses in some years in the recent past. But the question is whether it is a temporary phase or not. The tribunal has come to the conclusion that it is a passing phase. It is well settled that in drawing up enduring schemes like gratuity schemes temporary losses or gains should not be taken into consideration. What is of the essence is the profit making capacity of the concern. In determining that question one has to take into consideration the paid up capital of the company, its reserves, its earnings in the past and its future prospects. A practical view of the question has to be taken.

In National Iron and Steel Co. Ltd. and others v. State of West Bengal and another [[1967] 2 S.C.R. 391.], this Court speaking through one of us (Mitter, J.) quoted with approval the following passage in Burhanpur Tapti Mills, Ltd. v. B. T. Mills Mazdoor Sangh [(1965) 1 LLJ 453] :

> ". . . 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", and it must be further seen "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 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. This is one 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 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."

In Calcutta Insurance Co. Ltd. v. Their Workmen [[1967] 2 S.C.R. 596.], this Court observed :

> "On the financial aspect of a gratuity scheme, we were referred to the case Wenger & Co. v. Their workment [(1963) II LIJ 403]. There it was observe 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."

In the light of the principles noted above and on the material placed before the tribunal it is not possible to hold that the tribunal's conclusion was without any just basis.

For the reasons mentioned above this appeal fails and the same is dismissed with costs.

> # Appeal dismissed##

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