SUPREME COURT OF INDIA

Hydro (Engineers) Pvt. Ltd.

Vs.

The Workmen

C.A.No.1934 of 1967

(S. M. Sikri, J. M. Shelat and V. Bhargava, JJ.)

30.04.1968

JUDGEMENT

SHELAT, J.:-

1. The appellant company is a private limited company of which the authorized capital is Rs. 1 lac and the subscribed capital Rs. 50,000. Its business is to manufacture milk cans. According to the Company, it has not been able to maintain, much less increase, its production owing to the control orders restricting the import of raw materials required for its manufacturing process. The Company was started in 1942 but except for a few years when it made some profits, it has had to suffer losses during the rest of the years, the total loss suffered up to 1964-65 being Rs. 1,66,912. The Company is a small unit having on its roll 53 workmen.

2. In 1958, a reference was made under Section 10 (1) (d) of the Industrial Disputes Act, 1947 in respect of the demands made by its employees for increase in the wage scales. The reference ended in a settlement dated May 27, 1959 whereunder a slight increase in the wage scales was made. It also provided for an ad hoc increase in the wages of those getting Rs. 2.44 or more per day. The

revised wages were to come into force retrospectively from October 1, 1958. In 1961, another reference was made which also resulted in a settlement dated September 11, 1961. Under that settlement the workmen were classified into four categories and consolidated wage scales for each of the categories with a provision for increments were agreed upon. Since these were consolidated wage scales, the demand for dearness allowance was not pressed. An award was made in terms of the said settlement with retrospective effect from April 1, 1961. In 1964, the Union once again demanded revision of wage scales. The dispute was referred to the Industrial Tribunal which made what has been referred to as the Bilgrami award. The Tribunal retained the same categories and the only modification it made was to increase the wage scales previously fixed, taking into consideration the rise in the index of cost of living in the meantime from 450 to 538. The said award fixed the wage scales as follows:

Unskilled - Rs. 4.15-0.10-Rs. 5-15.

Semi Skilled - Rs. 4.75-0.15-Rs. 6.25.

Skilled II - Rs. 5.50-0.25-Rs. 8.00.

Skilled I - Rs. 6.50-0.30-Rs. 9.50.

Apprentices - Rs. 3.25-3.75-Rs. 4.25.

The award provided that the increments in the revised scales were to be annual and were to start from April 1, 1965. The award was made effective from November 9, 1964 which was the date of the reference. It, however, rejected the Union's demand to link up the wage scales with the index of cost of living. By April 1, 1967, therefore, the workmen had received two annual increments and consequently the wages paid to the first four categories were Rs. 4.35, 5.05, 6.00 and 7.10 per day respectively. It is thus clear that the Bilgrami award took the scales previously fixed as its basis when the cost of living index stood at 450 and increased them taking into consideration the fact that the said figure had gone up by about 94, that is by raising it by 1 n. p. for every point.

3. On June 17, 1967, the Union served a notice of demand which called for (a) revised scale of wages with effect from July 1, 1966: (b) for certain adjustments; (c) for linking up the scales with cost of living index; (d) revision in the existing gratuity scheme and (e) for bonus for the year 1964-65. We are not concerned in this appeal with the last demand as the impugned award does not deal with that demand. The demand for revision of wage scales was based on the fact that the Bilgrami award had fixed the wage scales on the footing of the cost of living index being then 538 while that figure had shot up since then to 675 and that if the rise were to be neutralised as it was done by the Bilgrami award, the scale of unskilled workmen would come to Rs. 5.30 per day. So far as the gratuity scheme was concerned, the demand required that the qualifying period for the retiral gratuity should be reduced from ten to eight years and the qualifying period in case of termination of service by the employer should be done away with. The Company resisted the demand and the conciliation proceeding having failed, the State Government referred the dispute to the Tribunal.

4. The Tribunal took note while considering the demand for revision of scales and their linking up with the index of cost of living of the fact (a) that the Bilgrami award itself had sought to neutralise the rise in the living cost by raising the scales in proportion to the rise in the cost of living by then; and (b) that though that award was made in 1964, the wage scales thereunder fixed had already become unreal in the sense that the index had gone up to 675 by the time the Union filed its statement of claim, that is, March 25, 1967 and had reached the figure of 710 in July 1967 when the award was made. In these circumstances, the Tribunal thought that the Union had made out a case for revision, that it was necessary to make the wage scales realistic and therefore to link them up with cost of living index though the Bilgrami award had declined to do so. What the Tribunal did, therefore, was to retain the scales fixed by Mr. Bilgrami and treating them on the basis of 538 index of living cost, directed that they should be linked up with the index so that the scales would automatically go up as the index rose or fell. The award also directed that effect should be given to it as from July 1, 1966, the notice of demand having been served on June 17, 1966. The gratuity scheme framed in 1961 provided that ten days wages for every year of service should be paid as gratuity in case of death, retirement or resignation, provided the workmen had put in the minimum period of ten years of service. For the workmen whose services would be terminated by the employer, the qualifying period was four years of service. The Tribunal revised the scheme in two particulars; (a) it reduced the period from ten to eight years in case where the workman has died or resigned or retired; and (b) it deleted the qualifying period of four years altogether where his service has been terminated by the employer. The Tribunal considered the financial position of the Company and came to the conclusion that though it had been making losses, it was of a fairly long standing that the losses incurred in the part years were a temporary phase, that the Company's future was not black and, though not prosperous, it was in a satisfactory financial position. This appeal by special leave disputes the correctness of the award made by the Tribunal.

5. Counsel for the Company objected to the aforesaid observation regarding the Company's financial position an pointed out that its position cannot at all be said to be satisfactory in view of the fact that barring only a few years, it had made substantial losses all throughout. Taking a cue from this fact, he contended that (1) the reasons which impelled the Bilgrami Tribunal to refuse to link up the wage scales with the cost of living index still held good: (2) the Tribunal took a wrong view as to what would constitute a minimum wage; (3) it ignored the financial capacity of the Company; (4) it failed to take into consideration the principle of region-cum-industry and (5) there was no jurisdiction in reducing the qualifying period for the retiral benefit of gratuity from ten to eight years and for deleting the qualifying period in the case of termination of service by the employer. We propose to deal with contentions 1 to 4 first and consider separately the changes made by the Tribunal in the existing gratuity scheme.

6. The Minimum Wages Act XI of 1948 does not define 'minimum wages' presumably because it would not be possible to lay down a uniform minimum wage for all industries throughout the country on account of different and varying conditions prevailing from industry to industry and from one part of the country to another. The legislature also thought it inexpedient to apply the Act to all industries at a time and, therefore, it applied the Act to certain employments only specified in the Schedule thereto leaving it to the appropriate government to add by notification to that effect,

industries in the said Schedule at suitable time and in appropriate conditions. But Section 4 of the Act provides that the minimum rates of wages may consist of a basic rate of wages and a special allowance at a rate to be adjusted or a basic rate of wages with or without the cost of living allowance and cash value of concessions in respect of supplies of essential commodities at concession rates where so authorised or an all inclusive rate allowing for the basic rate, the cost of living allowance and the cash value of the concessions if any. Sub-section (2) of Section 4 provides that the cost living allowances and the value of the concessions in respect of supplies of essential commodities at concession rates shall be computed by the competent authority at such intervals and in accordance with such directions as may be given by the appropriate Government It is thus clear that the concept of minimum wage does take in the factor of the prevailing cost of essential commodities whenever such minimum wage is to be fixed. The idea of fixing such wage in the light of cost of living at a particular juncture of time and of neutralising the rising prices of essential commodities by taking up scales of minimum wages with the cost of living index cannot, therefore, be said to be alien to the concept of a minimum wage. Furthermore, in the light of spiralling of prices in recent years, if the wage scales are to be realistic, it may become necessary to fix them so as to neutralise at least partly the price rise in essential commodities. Indeed, when the Bilgrami award revised the wage scales it took as aforesaid, into account the rise in the cost of living index and neutralised that rise by approximately raising them by 1 n. p. for every point in the rise though it declined to join up the scales with the index of cost of living.

7. What the present award does is to fix the minimum wage scales and not to fix fair wages. That is clear from the fact that it retains the scales fixed by the earlier award and taking them on the basis of the index figure at 538 it provides for automatic rise or fall therein with the corresponding change in the index of living cost. Presumably the Tribunal thought it necessary to do so because by the time it came to make the award, the index figure had already gone up to 710. If the Tribunal were to refuse to link up the scales with the index of cost of living, the neutralisation it sought to do would again go out of gear making once again the scales unreal and reduce them even below the floor-level. That the Tribunal fixed the consolidated minimum wages and not fair wages is clear from the fact (1) that it retained the scales fixed by the previous award which had increased them from Rs. 3.20 per day for an unskilled workman to Rs. 4. 15 per day as by that time the index had gone up from 450 to 538; and (2) by its observation that the Company has to pay the minimum wages irrespective of its ability to bear the additional burden.

8. The fact that an employer might find it difficult to carry on his business on the basis of minimum wages is an irrelevant consideration is now a well settled principle: (cf. Bijay Cotton Mills Ltd. v. State of Ajmer, (1955) 1 SCR 752 = (AIR 1955 SC 752., Unichovi v. State of Kerala, (1962) 1 SCR 946 = (AIR 1962 SC 12) and Express Newspapers (Pvt.) Ltd. v. Union of India, 1959 SCR 12 = (AIR 1958 SC 578)). While considering the distinction between minimum and fair wages this Court in the case 1962-1 SCR 946 = (AIR 1962 SC 12) observed at p. 957 (of SCR.) = (at p. 17 of AIR) that the policy of the Minimum Wages Act, 1948 was to prevent employment of sweated labour in the general interest and so in prescribing the minimum wage rates, the capacity of the employer need not be considered as the State assumes that every employer must pay the minimum wage before he employs labour. It also observed that the Act contemplates that minimum wage rates must ensure not merely the mere physical need of the worker which would keep him just above starvation but must ensure for him not only his subsistence and that of his family but also preserve his

efficiency as a workman. It should therefore, provide, as the Fair Wages Committee appointed by the Government recommended, not merely for the bare subsistence of his life but for the preservation of the worker and so must provide for some measure of education, medical requirements and amenities. This concept of the Committee has been accepted by industrial adjudication in the country and was expressly approved of in Express Newspapers (Pvt.) Ltd., 1959 SCR 12 = (AIR 1958 SC 578). Counsel for the Company, however, cited before us the decisions in Airlines Hotel v. Its Workmen, (1964) 1 Lab LJ 415 (SC) and Novex Dry Cleaners v. Its Workmen, 1962-1Lab LJ 271 (SC) where the question of capacity and the wage scales prevailing in comparable industries in the region were considered relevant factors. But those were not cases where minimum wage rates were fixed but were cases of fair wages where those two factors had to be taken into account. The Company's contention that the Tribunal failed to take into consideration the financial capacity, the fact of the Company having made losses during the past years, its difficulties in importing raw materials and had also failed to apply the region-cum-industry principle an therefore the award was vitiated, has no merit. We cannot also accept the contention that the Tribunal erred in linking up the wage scales with the living cost because ha it not been done, the wage scales would have again gone unreal once the index had gone up as it then threatened to do. We find, therefore, no reason to interfere with the minimum wage rates fixed by the Tribunal.

9. A subsidiary contention noised by the Company that by reason of the Bilgrami award having provided for incremental scales, the workmen under the present award will get double advantage, namely, increment and the rise in the wage scales during the same period has also no substance. The incremental scale was fixed in that award on the basis of the index figure being 588. Those scales have been retained. The two increments that the workmen have earned in 1965 and 1966 were on the footing of those scales which, as aforesaid, were fixed on the basis of the index, figure of 538. What the present award directs is to pay the workmen as from July 1, 1967, the wage scales calculated in accordance with the rise in the index of living cost which had taken place since the last award. The increments earned having been on the footing of the index figure of 538, there is no question of the workmen getting a double advantage.

10. The next objection to the award was that the Tribunal erred in giving effect to the award retrospectively as from July 1, 1966, that is, approximately from the date of the demand and that if at all it wanted to give such retrospective effect, the utmost that it could do was to enforce if from the date of the reference. In some cases retrospective effect, no doubt, has been given from the date of the reference. But it is a matter of discretion for the Tribunal to decide from the circumstances of each case from which date its award should come into operation. No general rule can be laid down as to the date from which a Tribunal should bring its award in force: [see Hindustan Times v. Their Workmen, 1964-1 SCR 284 = (AIR 1968 SC. 1332)]. Presumably, the Tribunal gave effect to its award front July 1966 as by that time the cost of living index had already gone up considerably and not to have done so would have been to deprive the workmen of the minimum wages commensurate with that rise in Jhagrakhand Collieries (Private) Ltd. v. C.G. I. T. Dhanbad, 1960-2 Lab LJ 71 (SC) and United Collieries v. Workmen, 1961-2 Lab LJ 75 (SC) the awards were made operative from the respective dates of demands and this Court did not interfere with those awards on the ground that there was thereby any breach of any recognised principle. If the Tribunal has exercised its discretion and no substantial ground is made out to show that it was unreasonably exercised, the mere fact that it has retrospectively enforced its award from the date of the demand is hardly a ground for

interference with the award.

11. We now turn to the changes made by the Tribunal in the existing gratuity scheme fronted by the Savarkar Tribunal. In our view, there is force in the Company's contention that the changes, namely, reduction of the qualifying period from ten to eight years in the case of termination of service by death, retirement or resignation and deletion of the qualifying period of four years in the case of termination of service by the employer were not justified. The Tribunal in fact has not given any specific reasons which necessitated the two changes.

12. It is now well settled that gratuity is a reward for good, efficient and faithful service rendered for a fairly substantial period and that it is not paid to the employee gratuitously or merely as a matter of boon but for long and meritorious service: cf. Garment Cleaning Works v. Its Workmen, 1961-1 Lab LJ 518 = (AIR 1962 SC 678) and 1959 SCR 12 = (AIR 1958 SC 578). Since the justification for gratuity is a long and meritorious service, schemes of gratuity framed by the tribunals and approved of by this Court have always provided some qualifying period. In Indian Oxygen and Acetylene Co. Ltd., Employees Union v. Indian Oxygen and Acetylene Company, 1956-1 Lab LJ 485 (LATI-Mad.) and 1959 SCR 12 = (AIR 1958 SC 578) the qualifying period for gratuity on termination of service by resignation or retirement was fixed as 15 years. In 1961-1Lab LJ 518 = (AIR 1962 SC 678) though the Company objected to the period of ten years and contended on the analogy of the aforesaid two decisions that it should be fifteen years, this Court gave its approval to the period of ten years in case of retirement or resignation. On the other hand in British Paints v. Its Workmen, (1966) 2 SCR 528 = (AIR 1966 SC 782) the period of five years provided by the award was changed into ten years on the ground that a fairly long minimum period for qualifying for gratuity in the case of resignation or retirement was necessary to prevent the workmen leaving one concern after another after putting in short minimum service for qualifying for gratuity. Similarly, modification from five to ten years was made in a recent decision of this Court in Calcutta Insurance Co,. Ltd. v. Their Workmen,, 1967-2 Lab LJ I = (AIR .1967 SC 1286). Though no hard and fast rule can be laid down and each case must be decided on its own circumstances the general trend as seen from a long series of decisions is in favour of ten years of qualifying service. The Tribunal in the absence of any substantial reason, was, therefore, not right in reducing the period front ten to eight years. As regards the deletion of four years minimum period in cases where the employer terminates the service also we do not find any legitimate ground for the alteration of the scheme. It was, however, said that if such a period is provided for in a scheme, it was possible that an employer would terminate the services of a workman even though the employee wants to render continuous service to enable him to earn the gratuity. This does not appear to be a legitimate apprehension for unless the employer is in a position to establish misconduct justifying termination of service under a standing order, he cannot put an end to the service only to deprive the workman of gratuity. On the other hand, there is the danger that whereas in the case of retirement or resignation the workman

would have to put in ten years of service, if no minimum period is provided for in the case of termination by the employer it would be possible for a workman to commit some misconduct and earn gratuity within a shorter time than the one who after a long period of meritorious service retires

or resigns. Since doing away with the qualifying period is likely to result in such an anomaly, it is necessary to have some qualifying minimum period. As the period of four years provided in the scheme is not under challenge before us, there is no reason to interfere with it. We, therefore, set aside the two changes made by the Tribunal in the gratuity scheme. The scheme for gratuity will therefore remain the same as framed by the Savarkar award.

13. In the result, except for the aforesaid modifications in the award, we find no reason to interfere with the award.

The appeal except to the extent aforesaid, fails and is dismissed. There will be no order as to costs.

Appeal allowed in part.