

Workmen of New Egerton Woollen Mills

v.

New Egerton Woollen Mills and Others

(Supreme Court Of India)

HON'BLE JUSTICE J. M. SHELAT HON'BLE JUSTICE V.BHARGAVA

Civil Appeal No. 553 Of 1966 | 27-02-1969

Shelat, J.

1. This appeal, by special leave, is directed against the award dated 11 September, 1964 made by the industrial tribunal, Punjab, in Reference No. 21 of 1961.

2. On demands made by the workmen of the respondent-company the Government of Punjab by its notification dated 18 April, 1961 referred three questions for adjudication by the tribunal. The three questions were :

(1) revision of categories,

(2) revision of wage-scales, and

(3) revision of wage-rates of piece-rated workmen.

3. The respondent-company is a subsidiary of the British India Corporation and manufactures woollen textiles for the last several years. Amongst the various textile establishments in and around Amritsar, the company is perhaps the biggest textile concern. Yet, there had been no revision of wage-scales worth the name even since 1955. In 1953 company's workmen made a demand for increase in wages and for annual increments. In a reference then made being Reference No. 3 of 1953, the tribunal refused to revise the existing wage-scales

as it had not before it sufficient material and increased only the daily rates of unskilled workmen from 9 to 11 annas per day and fixed 14 annas per day for the semiskilled workmen as the starting minimum rates. It also declined to revise the existing categories of workmen fixed by the company. Another reference, being Reference No. 29 of 1957, whereunder rates payable to piece-rated workmen were sought to be revised, also failed as the previous award made in Reference No. 3 of 1953 had not been terminated. Once other reference made a little later also proved infructuous for the same reason. On 22 April, 1958, the parties arrived at a settlement whereunder the workmen agreed not to raise any fresh dispute for a period of two years. As wage-scales and categorization of workmen had thus so far not been scientifically made or revised, the workmen terminated the said award given in Reference No. 3 of 1953 and the said settlement by a notice dated 28 June, 1960 and made the said demands resulting in the present reference. It is true that when the said award in Reference No. 3 of 1953 was made the wage-scales in the respondent-company were slightly higher than those in the other textile establishment in the region. But those establishments were comparatively smaller and their wage-scales had since then been revised from time to time as the cost of living rose. No such revision, however, took place in the wage-scales of the respondent-company and consequently though it was the biggest unit in the region its wage-scales remained not only static but in some respect lagged behind those in the other establishments. Similarly, the three categories of workmen made by the company, namely,

(1) unskilled,

(2) semiskilled, and

(3) skilled,

were also not revised. These three categories did not obviously classify the workmen according to the different types of tasks performed by them and the degree of skill required in each of them. The other establishments, on the other hand, had classified their workmen into six categories, namely,

(1) unskilled,

(2) semiskilled (lower),

(3) semiskilled (higher),

(4) skilled (lower)

(5) skilled (higher), and

(6) highly skilled.

There can in these circumstances be no doubt that there was a clear justification for a revision in wage-scales and categorization of workmen in the respondent-company.

4. During the hearing of the reference, the tribunal appointed, at the instance of the workmen, one D. L. Sen, the Principle of the Technological Institute of Textiles, Bhivani, as the assessor. The assessor made two reports, one dated 23 February, 1963 and the other dated 17 April, 1964, recommending revised categories and grades and wage-scales for each of the categories. In the meantime as the reference had been pending for a long time, the tribunal gave an interim award dated 1 November, 1963 granting thereunder certain interim reliefs. The assessor, in his said reports, had suggested that there should be six categories of workmen. A notification issued by the Government of Punjab on 4 August, 1964 under Minimum Wages Act, 1948, also had directed that workmen in the textile industry in the State should be fixed in the six categories named therein. Considering the fact that the other textile units in the region had classified their workmen into six categories and the assessor's recommendation in the that regard, the tribunal classified the workmen into six categories, namely :

(1) unskilled.

(2) semiskilled (lower).

(3) semiskilled (higher),

(4) skilled (lower),

(5) skilled (higher), and

(6) highly skilled.

Having thus laid down the six categories, the tribunal fixed the workmen into those categories according to the tasks entrusted to them and the degree of skill required in each of them.

The wage-scales existing in the company before the present award were as follows :

1. Unskilled - Basic wages ... Rs. 22.72 - 1.62 - 29.25 Dearness allowance ... Rs. 45.00 - 45.00

Total ... Rs. 67.72 - 1.62 - 74.25

2. Semiskilled (lower) - Basic Wages ... Rs. 26.00 - 3.25 - 39.00 Dearness allowance ... Rs. 45.00 - 45.00

Total ... Rs. 71.00 - 3.25 - 84.00

3. Semiskilled (higher) - Basic Wages ... Rs. 26.00 - 3.25 - 39.00 Dearness allowance ... Rs. 45.00 - 45.00 Total ... Rs. 71.00 - 3.25 - 84.00

4. Skilled (lower) - Basic wages ... Rs. 40.62 - 4.88 - 78.00 Dearness allowance ... Rs. 45.00 - 59.00 Total ... Rs. 85.62 - 4.88 - 137.00

5. Skilled (higher) - Basic wages ... Rs. 40.62 - 4.88 - 78.00 Dearness allowance ... Rs. 45.00 - 59.00

Total ... Rs. 85.62 - 4.88 - 187.00

For the highly skilled, there were no wage-scales and wages used to be paid to them at the direction of the management. It appears that Rs. 45 per month were paid as dearness allowance to workmen getting basic wages up to Rs. 49; Rs. 59 per month were paid as dearness allowance to those getting basic wages ranging from Rs. 50 to Rs. 99; Rs. 66 per month were paid as dearness allowance to those whose basic wages ranged from Rs. 100 to Rs. 150; and 40 per cent of the basic wages to those whose basic wages were Rs. 150 and above. By the said notification, the State of Punjab also fixed the following minimum wages for textile workers in the State :-

1. Unskilled - Rs. Basic Wages 60 Dearness allowance ... 12 Total ... 72

2. Semiskilled (lower) - Basic Wages 70 Dearness allowance ... 15 Total ...

85 3. Semiskilled (higher) - Basic wages 80 Dearness allowance ... 15

Total ... 95 4. Skilled (lower) - Basic wages 90 Dearness allowance ... 20

Total ... 110

5. Skilled (higher) - Basic wages 100 Dearness allowance ... 20

Total ... 120

No minimum wages were prescribed, however, for the sixth category, namely, the highly skilled.

5. It is clear that the wage-scale prevailing in the company were less favourable in some cases both at the floor as well as the maximum levels than the minimum wages prescribed by the said notification. Even so, the company resisted before the tribunal any revision in its wage-scales and in support placed a comparative chart of wage-scales prevailing in and the dearness allowance paid by other textile establishments in the region. The tribunal, however noted that the said chart did not support the company's contention that its wage-scales were more favorable than those in the other establishments and observed that though the company had slightly higher starting scales for unskilled workmen, the other establishment had higher starting scales for the rest of the operatives and rejected the company's case that its wage-scales needed no revision. As regards the company's financial ability to bear the additional burden in the event of its wage-scales being stepped up, there could be no doubt that the company had been making a steady progress during the last several years. From the materials produced by the company itself it can be seen that the labour force employed by it has risen from 1, 590 in 1960 to 2, 285 in 1961 and to 3, 000 in 1963. Its total sales had also increased from about Rs. 2 crores in 1962 to about Rs. 3 crores in 1963. The company maintains 7, 620 worsted and 8, 640 woollen spindles and 86 handlooms and 230 powerlooms. It is an undisputed fact that no other textile unit in the region engages as much labour force and has as many looms and spindles as the respondent-company. As regard its resources, the company, as aforesaid, is subsidiary of the said British India Corporation which has a capital of more than Rs. 6 crores and has been in existence for the last about 50 years. To ascertain the financial capacity of the company itself, the tribunal at the instance of the workmen called upon the management to produce its annual financial and profit and loss statements. That the company refused to do on one excuse or the other. The tribunal, therefore, rightly drew an adverse inference against the company that if those statements had been produced, they would have disclosed the company's financial ability to bear the additional burden if the tribunal were to revise its wage-scales. Counsel for the company

conceded before us that the tribunal was entitled to draw the said inference in view of the company's refusal to disclose its accounts. Therefore, the company's capacity to pay wages at higher scales cannot be in question. Before the tribunal the workmen demanded the following wage-scales :

1. Unskilled - Rs. Basic ... 35 - 2 - 55 - 3 - 70 Dearness allowance ... 45 - 45 - 45

Total ... 80 - 100 - 115

2. Semiskilled (lower) - Basic ... 40 - 3 - 70 - 90 Dearness allowance ... 45 - 59 - 59 Total ... 85 - 129 - 149

3. Semiskilled (higher) - Basic ... 45 - 75 - 95 Dearness allowance ... 45 - 59 - 59 Total ... 90 - 134 - 154

4. Skilled (lower) - Basic ... 65 - 4 - 105 - 5 - 130 Dearness allowance ... 59 - 66 - 66

Total ... 124 - 171 - 196

5. Skilled (higher) Basic ... 75 - 4 - 115 - 140 Dearness allowance ... 59 - 66 - 66

Total ... 134 - 181 - 206

6. Highly skilled - Basic ... 100 - 8 - 180 - 10 - 240 Dearness allowance ... 59 - 66 - 69

Total ... 159 - 246 - 309

There was no demand for revision of dearness allowance paid by the company as it was already linked with the index of cost of living. As aforesaid, the company opposed the demand on the ground that its wage-scales were more favorable than those in other similar establishments and produced in support of its contention a chart showing wage-scales prevailing in five textile establishments in the region. Those establishments, however, could not be said to be comparable as they are very much smaller than the company. Even then the tribunal noticed that their wage-scales were more favourable than the company's wage-scales. There was evidence also that in recent years certain other establishments in the region had agreed to pay an ad hoc amount of Rs. 8 per months over and above the dearness allowance paid by them. The workmen's case, on the other hand, was that though smaller in every respect than the respondent-company, the Orient Carpet Manufactures of Amritsar was the only establishment which could be regarded as comparable both because it was the largest next to the respondent-company, and also because it was like the respondent-company, a composite unit producing both worsted and woollen cloth. The wage-scales and grades prevailing in Orient Carpet Manufacturers at the time were as follows :

1. Unskilled ... Rs. 71.50 - 2.08 - 92.30 - 2.60 - 118.30.
2. Semiskilled (lower) ... Rs. 74.10 - 2.60 - 100.10 - 3.90 - 139.10.
3. Semiskilled (higher) ... Rs. 78 - 3.90 - 117 - 5.20 - 169.
4. Skilled (lower) ... Rs. 104 - 3.90 - 143 - 5.20 - 195.
5. Skilled (higher) ... Rs. 130 - 5.20 - 182 - 6.50 - 247.
6. Highly skilled ... Rs. 156 - 6.50 - 221 - 7.80 - 299.

These scales included dearness allowance which, it should be observed, was static inasmuch as it was not linked with the index of cost of living. The tribunal

accepted the Orient Carpet Manufactures as the only comparable unit and in the light of its wage-scale awarded the following basic wage-scales : Unskilled 30 - 1 - 40, semiskilled (lower) 40 - 2 - 60 - 3 - 75, semiskilled (higher) 45 - 2 - 65 - 3 - 80, skilled (lower) 50 - 2 - 60 - 3 - 90, skilled (higher) 60 - 3 - 90 - 4 - 110 and highly skilled 100 - 6 - 130 - 7 - 200. On this basis the total wage-packet including dearness allowance by the company would come to :

1. Unskilled - Basic ... Rs. 30 - 1 - 40 Dearness allowance ... Rs. 48 - 48 (span of 10 years). Total ... Rs. 78 - 1 - 88

2. Semiskilled (lower) - Basic ... Rs. 40 - 2 - 60 - 75. Dearness allowance ... Rs. 48 - 61.50 - 61.50 (span of 15 years).

Total ... Rs. 88 - 2 - 121.50 - 136.50.

3. Semiskilled (higher) - Basic ... Rs. 45 - 2 - 65 - 3 - 80. Dearness allowance ... Rs. 48 - 65.50 - 61.50 (span of 15 years).

Total ... Rs. 93 - 2 - 126.50 - 3 - 141.50.

4. Skilled (lower) - Basic ... Rs. 50 - 2 - 60 - 3 - 90. Dearness allowance ... Rs. 61.50 - 61.50 - 61.50 (span of 15 years).

Total ... Rs. 111.50 - 2.121.50 - 3 - 151.50.

5. Skilled (higher) - Basic ... Rs. 60 - 3 - 90 - 4 - 110. Dearness allowance ... Rs. 61.50 - 61.50 - 68.50 (span of 15 years). Total ... Rs. 121.50 - 3 - 151.50 - 4 - 178.50.

6. Highly skilled - Basic ... Rs. 100 - 6 - 130 - 7 - 200 Dearness allowance ... Rs. 68.50 - 68.50 - 50 - 80 (at 40 per cent of the basic wages).

Total ... Rs. 168.50 - 6 - 198.50 - 7 - 280 (span of 15 years)

6. To adjust the workmen into these revised grades the tribunal provided that those who at the date of the operate of the award were getting less than the minimum in the grade applicable to them should be stepped up so as to start as the new minimum in the scale while those getting more than such minimum but whose basic pay did not correspond with any stage in the new grade should be given the next higher step in the scale. The workmen whose present wages were equal to the maximum or more than the maximum in the new grade were to continue to receive the same. While fitting the workmen in the revised grades the tribunal held that as the company's wage-scale for the last several years had been low the workmen should given the benefit of their past service. Therefore, it provided that one increment should be given to those who had put in more than three years' but less than six years' continuous service and two increments should be given to those who had completed continuous service for six years or more. No increments was provided for those who were getting the maximum or more than the maximum in the new grades. As regards piece-rated operatives, their rates had been fixed several years ago and though some increase was given to time-rated workmen in the award resulting from Reference No. 3 of 1953 no corresponding increase was given at any time to the piece rated operatives. Most of them fell in the categories of semiskilled and skilled, only a few of them being in the unskilled category. Taking these facts into consideration the tribunal gave a rise of 20 Per cent in their rates. The tribunal also revised the wage-scale for clerical and supervisory staff of the company. As regards the date from which the award was to come into operation, the tribunal fixed 1 November 1963, that being the date of its interim award on the ground that "the steep rise in prices started near about that date." The workmen were dissatisfied with the award and hence this appeal. We may at this stage mention that counsel for the company did not, and for the reasons already stated, could not dispute the tribunal's conclusion as to the financial capacity of the company of the company to bear the additional burden which the revised scales imposed on it, not could he legitimately dispute the justification and the necessity of revision of those wage-scale. He also did not contend against the classification of workmen in the six categories made by the tribunal. On the other hand, Sri Malhotra for the workmen did not press the appeal against the 20 per cent rise given by the tribunal in the rates payable to piece-rated workmen. After some

argument he also gave up his contention that certain workmen had not been properly fitted in the revised grades. In this appeal, therefore, only two questions remain for determination :

- (1) Whether the revised scales awarded by the tribunal are fair and adequate and in consonance with the settled principles relating to fixation of fair wages ? and
- (2) Whether the increments in consideration of the past services of the workmen granted by the tribunal were fair and adequate ?

7. A number of decisions both of this Court as also of industrial tribunals have laid down that two principal factors which must weigh while fixing or revising wage-scales and grades are : how the wages prevailing in the establishment in question compare with those given to workmen of similar grade and scale by similar establishments in the same industry or in their absence in similar establishments in other industries in the region and what wage-scales the establishment in question can pay without any undue strain on its financial resources. The latter question does not arise in the present case as the financial capacity of the company has, for the reasons afore-stated, not been disputed. In consideration the first question, the tribunal has first to ascertain whether there are comparable concerns in the same industry in the region. In doing so, it has to take into account the extent of business, the capital invested, the profits, the nature of business, the standing, the strength of labour force, the reserves, if any, the dividends paid, the future prospects of the business of concerns put forward before it as comparable and other relevant facts. Obviously, there can be no comparison between a small struggling unit and a large flourishing concern of long standing. Where there are no such comparable concerns in the same industry in the region the tribunal can look to concerns in other industries in the region for comparison but in that case such concerns should be as similar as possible and not disproportionately large or absolutely dissimilar - of. *French Motor Car Company, Ltd. v. Their workmen* [1962 - I L.L.J. 744]; *Williamsons (India) (Private), Ltd. v. Its workmen* [1962 - I L.L.J. 302]; *Novex Dry Cleaners v. Its workmen* [1962 - I L.L.J. 271] and *Kamani Metals and Alloys, Ltd. v. Their workmen* [1967 - II L.L.J. 55]. As seen earlier, though there are a large number of units in the same industry in Amritsar region there was none, which in size, resources or labour force, could properly compare with the respondent-company and the nearest which could be said to compare with it was the Orient

Carpet Manufactures which at the material time had a labour force of about 1, 000 men as compared with about 3, 000 men employed in the respondent-company. The workmen in these circumstances contended and the tribunal accepted that the Orient Carpet Manufactures should be taken as a Comparable Concerns. Unfortunately, although it was found that there was no truly comparable concern in the same industry in the region no attempt was made to find out whether there were comparable concerns in the other industries in the region. The result was that the tribunal could fall back upon the Orient Carpet Manufactures only which the workmen had claimed to be the only comparable concern. Counsel for the company, however, sought to contend that the Orient Carpet Manufacturers could not be treated as comparable but the only ground he could urge for his contention was that whereas the dearness allowance paid by the respondent-company was variable as it was linked with the index of cost of living, that was not so in the case of the Orient Carpet Manufacturers where fixed amounts were paid as and by way of dearness allowance to different categories of workmen and were included in its consolidated wage-scales. That undoubtedly is correct. But that can hardly be the ground for the Orient Carpet Manufactures not being considered as a comparable concern. The reason is that the tribunal fixed the revised wage-scales on the basis of dearness allowance payable by the respondent-company on 1 November 1963 after taking into account the consolidated wage-scales payable by the Orient Carpent Manufacturers which included dearness allowance payable on that date. It is true that the dearness allowing being variable in the respondent-company the amounts of dearness allowance payable by the respondent-company would vary depending upon the rise or fall in the index of cost of living. But that difference alone would not preclude the Orient Carpent Manufactures being accepted as a comparable concern in view of the respondent-company being very much larger in every sense than the Orient Carpet Manufacturers. The contention urged on behalf of the company, therefor, cannot be sustained. The grievance of the workmen, on the other hand, was that while professing to treat the Orient Carpet Manufacturers as a comparable concern the tribunal did not in fact fix the revised wage-scales in such a manner as to equalize with those of the Orient Carpet Manufacturers. It was also urged on their behalf that the increments awarded by the tribunal were not adequate and lastly that the award should have been brought into force from the date of the demand or at least from the date of the award. There is, in our view, considerable justification for the workmen's first contention. Taking the dearness allowance payable by the two companies as on 1 November 1963, the date when the award was directed by the tribunal to come into force, the wage-scales as awarded by the tribunal fell short of those existing in the Orient Carpet Manufacturers on that day. A comparison of the

two wage-scales clearly brings out the disparity between the two of them. Whereas in the Orient Carpet Manufacturers the maximum which an unskilled workman was entitled to get was Rs. 118.50, the maximum which an unskilled workman under the award can get is Rs. 88 only. Similarly, the maximum which all the other categories of workmen in Orient Carpet Manufacturers were entitled to are higher than those awarded by the tribunal. A glance at the minimum consolidated wages fixed by the Punjab Government by their said notification also shows that the wage-scales awarded by the tribunal are hardly better than those prescribed under the said notification. Since the tribunal accepted the Orient Carpet Manufacturers as the only comparable unit in the region it could not with any reason fix wage-scales at levels lower or less favourable than those existing in that company. There is, therefore, force in the workmen's complaint that the revision made by the tribunal was neither fair nor adequate. Since there is no question of the company not having the requisite financial capacity, we propose to modify the wage-scales awarded by the tribunal so as at least to bring them in line with those in the Orient Carpet Manufacturers, on 1 November 1963. The scales of basis wages so modified by us would have to be follows :

- (1) Unskilled ... Rs. 30-2-60

- (2) Semiskilled (lower) ... Rs. 40-2-60-3-75

- (3) Semiskilled (higher) ... Rs. 45-2-65-4-105

- (4) Skilled (lower) ... Rs. 50-3-80-5-130

- (5) Skilled (higher) ... Rs. 70-7-120-6-180

- (6) Highly skilled ... Rs. 100-6-130-7-235

There is no occasion for revising the rates of dearness allowance as dearness allowance is already linked with the index of cost of living and the tribunal has

awarded Re. 1 for every rise or fall or two points in the said index as from 1 November 1963. The result of our modifying the wage-scales is that the workmen will be entitled to the following wage-scales including the dearness allowance :

WAGES INCLUSIVE OF DEARNESS ALLOWANCE

Serial Class of Starting 10 years 15 years 20 years Number. workmen Rs. Rs.
Rs. Rs.

1. Unskilled (lower) ... 78.00 110.50 121.50 ...

2. Semiskilled ... 88.00 121.50 136.50 ... (higher)

3. Semiskilled ... 93.00 126.50 ... 173.50 (lower)

4. Skilled ... 111.50 141.50 ... 198.50 (higher)

5. Skilled ... 131.50 188.50 ... 248.50 (lower)

6. Highly skilled ... 168.50 233.50 ... 329.00 (higher)

8. We have not made any change in the scale fixed by the tribunal for the semiskilled (lower) as it practically corresponds with that in the Orient Carpet Manufacturers. Similarly, no change is made in the scale for the highly skilled for the same reason except that as in the Orient Carpet Manufacturers, we have increased the increment span of 5 years so as to make it correspond with that in the Orient Carpet Manufactures. A modification in the adjustments in the revised scales made by the tribunal is also, in our view, necessary. Equating a workman who has put in six years of service with another workman who has put in 10 or 15 years of service does not appear to be either fair or just particularly

as the wage-scales prevailing in the company have been for the last several years low. The principle followed in making such adjustments is that generally they should be granted when wage-scales are fixed for the first time. But that does not mean that where they are previously in existence such adjustments cannot be granted even though the scale have been low for a number of years. In such a case justice requires that adjustments should be made even a second time. In view of the finding by the tribunal that there has been no revision in the wage-scales since 1955 and wage-scales have all along been fairly low we think the adjustments granted by the tribunal should be liberalized. We direct therefore, that while fitting the workmen in the wage-scales modified by us as above, one increment should be given to those workmen who have put in three years' continuous service, two increments should be given to those who have put in six years' continuous service and three increments should be given to those who have put in continuous service for ten years or more. Those who have reached the maximum or more than the maximum would not be entitled to any increment. As regards the date on which the award should come into force, industrial tribunals have treated the date of demand and the date of the award as two extreme points. The tribunals, however, have discretion to fix any intermediate date depending upon the circumstances of each case. As has been said more than once, this Court would be reluctant to interfere with the date fixed by the tribunal if it has been done in the proper exercise of its discretion. In the present case the tribunal felt that in fairness to both the parties the intermediate date, namely, 1 November 1963, when it passed its interim award was the proper date from which the award should come into operation. The ground for selecting this date was that according to the tribunal the prices of commodities began to rise steeply in this region from that date. That ground has not been controverted by any material to the contrary. Their can, therefore, barely be any ground for our interference.

9. The result is that we modify the scales of basic wages and the increments as stated above, set aside the award and allow the appeal to the extent aforesaid. Since the workmen have substantially succeeded, the company will pay to them the costs of this appeal.