

Management and Ghaziabad Engineering Co. (P) Ltd.

Vs

Its Workmen

Civil Appeal No. 1408 of 1966

(J. C. Shah, G. K. Mitter JJ)

18.07.1969

JUDGMENT

SHAH, ACTING C.J. -

1. By order, dated February 24, 1965, the Chief Commissioner of Delhi referred for adjudication, industrial disputes between the appellant company and its workmen relating to dearness allowance and introduction of a scheme of gratuity for the benefit of the workmen. The Industrial Tribunal, Delhi, framed the following "gratuity scheme" :

##(1) On death or retirement One month's wages for each year on attaining the age of super- of service on part thereof in excess annuation or on becoming ment- of six months subject to a maximum of fully or physically unfit for 15 months' wages. In case of death offurther service. employee the gratuity shall be payable to his nominee or if there is no nominee to his legal heirs.(2) On termination after five 15 days wages for each year of service years' service for any cause or part thereof in excess of six months whatsoever except by way months subject to a maximum of 15retrenchment or resignation. months wages.(3) On resignation after 10 15 days wages for each year of service years of service. or part thereof in excess of six months subject to a maximum of 15 months wages :##

Provided that if termination is for any misconduct causing financial loss to the company, the amount of loss shall be deducted from the gratuity payable. The word 'wages' in this scheme shall mean the total pay packet of the workman including dearness which he was last drawing."

2. The Tribunal also directed that "all workmen who were appointed in 1960 or earlier should get dearness allowance at Rs. 3/- for every ten point rise in the cost of Consumer Price Index base 1960 over and above their existing wages with effect from 1st January, 1965. In case of workmen appointed after 1960, the Consumer Price Index base 1960 on the date of his appointment shall be found out and he shall be given Rs. 3/- as dearness for every ten point rise in cost of Consumer Price Index base 1960 above it with effect from 1st January, 1965 or such later date on which the limit of 10 point rise in cost of Consumer Price Index base is crossed." The Tribunal also directed that dearness allowance will not be enhanced till the limit to ten points be "crossed", and that dearness allowance once granted will not be reduced till the Consumer Price Index falls by more than 10 points. The Company has appealed to this Court with special leave.

3. In the view of the Tribunal, the financial position of the company "is very sound" and that it has

"financial capacity and stability to bear the additional burden of dearness allowance and of the gratuity scheme". In reaching that conclusion the Tribunal relied upon a news item published in the newspapers that 2,000 Russian Tractors were being immediately imported by the company even though the agency of the Company was being terminated. In relying upon newspaper reports the Tribunal may have erred. But the conclusion of the Tribunal is founded upon a review of several other circumstances. It is true that one of the primary lines of business of the company was of selling tractors as agents of Russian manufacturers. That agency was in danger of being terminated because the State Trading Corporation had arranged to take over the agency. But the balance-sheets of the company show that the agency was only one of the many lines of business and the closure of the agency of the tractor manufacturers was not likely to affect the financial structure of the Company seriously. The Tribunal has on appreciation of evidence come to the conclusion that the financial position of the company was sound and assuming that the Tribunal is governed by the strict rules prescribed by the Evidence Act, sitting in appeal with special leave we will not be justified in interfering with the finding of the Tribunal even if it be open to the criticism that a part of the evidence relied upon is not in law relevant.

4. The company had on its roll 244 workmen out of whom 118 entered employment after 1960. The company has been paying to its workmen wages consisting of two components basic wages and 50 per cent. of the basic wages as dearness allowance. Payment of wages is made in this form to all workmen whether their employment commenced before the year 1960 or thereafter. It is true that before 1960 the company used to make a consolidated payment without specifying any amount of basic salary or dearness allowance. Since 1960 in every appointment letter it was expressly recited that the employee will get a consolidated salary consisting of 2/3rd of the consolidated salary as basic wages and the balance as dearness allowance. The company has produced before the Tribunal 118 such letters of appointment in respect of all employees employed after the year 1960. In respect of the employees appointed prior to the year 1960 in the salary register basic salary and dearness allowance was separately entered though at the time of appointment of employees there was no allocation as basic wages and dearness allowance.

5. There is no dispute that since the year 1960 there has been a rise in the cost of living. The Consumer Price Index for industrial workers which was 100 in 1960, had risen to more than 130 in 1965. The management of the company granted dearness allowance to employees in other concerns under its management even though those other concerns were not financially very sound. No serious argument has been advanced before us that the rise in dearness allowance is not justified. The only ground of complaint is that by relating the dearness allowance to the total wage packet the workmen are given a rise both in the dearness allowance and in the basic wage.

6. The Tribunal has awarded dearness allowance at the flat rate of Rs. 3/- for every 10 point rise in the cost of Consumer Price Index. The rise is not related to the quantum of basic wage or consolidated wage. It is a flat uniform rate applicable to every workmen. The Tribunal was of the view that the allocation between the basic wage and the dearness allowance was "not fair", but for the purpose of the present reference, the question is academic because dearness allowance is not related to the quantum of salary that the workmen receive. The argument that the rise will operate to give to the workmen besides the additional dearness allowance, a percentage increase in dearness allowance already paid as part of the consolidated wage cannot be accepted. We do not therefore see any reason to interfere with the order passed by the Tribunal with regard to the dearness allowance "at the rate of Rs. 3/- for every 10 point rise in the Consumer Price Index."

7. Gratuity payable to a workman on termination of employment is to be computed on the total

wage packet of the workmen including dearness allowance which he has last drawn. This order makes a departure from the normal rule which is adopted in industrial awards. In *M/s. British Paints (India) Ltd. v. Its Workmen* (1966-2 SCR 523) this Court while introducing a gratuity scheme for the first time in the concern directed that the amount of gratuity shall be related to the basic wage or salary and not to the consolidated wage including dearness allowance. A similar order was made in *May and Baker (India) Ltd. v. Their Workmen* (1961-II LLJ 94). It is true that in *British India Corporation v. The Workmen* ((1965) Vol. 10 Factory Law Reports 244), an award made by the Tribunal fixing the quantum of gratuity on gross salary, i.e. basic wage plus dearness allowance was upheld by this Court. The Court affirmed that the usual pattern in fixing the gratuity is to relate it to the basic wage, but refused to interfere with the order because the practice in that concern was to fix gratuity on the consolidated wage.

8. Similarly, in *Hindusthan Antibiotics Ltd. v. Their Workmen* (1967-I LLJ 114), the Tribunal directed the employer to pay gratuity at the rate of one half of wages for each month including dearness allowance but excluding house rent and all other allowances for each completed year of service subject to a maximum of wages for ten months. In rejecting the claim of the employers for relating gratuity to the basic wage, this Court observed :

"If the industry is a flourishing one, we do not see any reason why the labour shall not have the benefit of both the schemes i.e., the employees provident fund and the gratuity scheme. Gratuity is an additional form of relief for the workmen to fall back upon. If the industry can bear the burden, there is no reason why he shall not be entitled to both the retirement benefits. The Tribunal considered all the relevant circumstances; the stability of the concern, the profits made by it in the past, its future prospects and its capacity and came to the conclusion that, in the concern in question, the labour should be provided with a gratuity scheme in addition to that of a provident fund scheme. There was no justification to disturb this conclusion."

9. In *The Remington Rand of India Ltd. v. The Workmen* (C. A. No. 2105/1966, decided on 11-8-1967) this Court declined to interfere with the order of the Tribunal awarding gratuity related to the consolidated wage including dearness allowance "in view of the flourishing nature of the concern, the enormous profits it was making the reserves it had built up as also in view of the fact that it was paying gratuity to executives on the basis of consolidated wages". In *The Delhi Cloth & General Mills Co., Ltd. v. The Workmen & Ors.* (C. A. No. 2168 of 1967, decided on 27-9-1968). This Court had to consider whether gratuity payable to workmen in the textile industry in the Delhi region should be related to the consolidated wage. After referring to the decisions which were brought to the notice of the Court, it was observed that :

"It is not easy to extract any principles from these cases : as precedents they are conflicting..... The Tribunal has failed to take into account the prevailing pattern in the textile industry all over the country.... It is a countrywide industry; and in that industry, except in one case to be presently noticed, gratuity has never been granted on the basis of consolidated wages."

10. The Court after referring to the schemes framed in respect of the industries in Bombay and Ahmedabad and other industries concluded that "determination of gratuity is not based on any definite rules. In each case it must depend upon the prosperity of the concern, needs of the workmen and the prevailing economic conditions examined in the light of the auxiliary benefits which the workmen may get on determination of employment".

11. There is no clear evidence on the record, and, no precedents have been brought to our notice, to justify a departure from the normal rule that the quantum of gratuity is related not to the consolidated wage packet but to the basic wage. A departure may be made from the normal rule, if there be some strong evidence or precedent in the industry, or conduct of the employer or other exceptional circumstances to justify that course. In the absence of such evidence, we are of the view that gratuity should be related to the basic wage and not to the consolidated wage packet. In the present case it is found that the financial position of the Company is sound but there is no evidence that the company is "making abnormally high profits" nor is there any evidence that in its sister concerns or in other engineering concerns in the region there is a practice of awarding gratuity related to consolidated wages.

12. It was urged on behalf of the company that even though the workmen had in the claim made by them, demanded a scheme of gratuity benefit at the rate of 15 days wages for each year of service in case of death or retirement on attaining the age of superannuation or on becoming mentally or physical unfit for further service, the Tribunal had awarded gratuity at the rate of one month's wages for each year of service subject to a maximum of 15 months' wages. But the claim was made on the footing that the wages were to include dearness allowance. When that claim is not accepted, we cannot hold the workmen bound by the multiplies.

13. We make no modification in clause (1) of the scheme. We modify the scheme in so far as it relates to the dearness allowance and direct that for the last sentence of the gratuity scheme the following shall be substituted :

"The word 'wages' in the scheme shall mean basic salary or emoluments excluding dearness allowance and other allowances and benefits payable to the workmen which he had last drawn."

14. Subject to the above modification, the appeal fails and is dismissed. There will be no order as to costs in the appeal.

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