

Federation of Small and Medium Industries and Others

Vs

The Workmen and Others

Civil Appeals No. 603, 789, 791 and 792 of 1967

(G. K. Mitter, C. A. Vaidialingam, I. D. Dua JJ)

18.01.1972

JUDGMENT

VAIDIALINGAM, J. -

1. In all these four appeals, the various industries concerned challenge the award of the Industrial Tribunal, dated December 31, 1966, fixing the wages and dearness allowance and also giving certain directions regarding festival holidays.
2. The reference itself was in 1962; but final award was made only in 1966, and unfortunately this matter has been pending for so many years. According to the appellants, the tribunal has really fixed fair wages. In support of this contention, it is urged by the learned counsel, Mr. D. N. Mukherjee, that the tribunal has not taken into account the various material matters as laid down by this Court, such as the paying capacity of the industry as well as the wages paid in the region by the units which are comparable with the appellants. On the other hand, it is the contention of Mr. Janardan Sharma, learned counsel for the unions, that what has been fixed by the tribunal is not fair wages but only minimum wage and hence it was not necessary to consider the paying capacity of the industry.
3. We have been taken through the various reasons given by the tribunal. It is not however quite clear from the award whether the tribunal was fixing minimum wages or fair wages. In fact, certain observations contained in the award lead us to believe that the tribunal was really fixing fair wages. If that is so, it was obligatory on the part of the tribunal to consider one of the essential circumstances, namely, the paying capacity of the industries. Admittedly, that has not been done by the tribunal.
4. We have been taken through the various balance-sheets and profits and loss accounts filed by some of the appellants. They reveal that most of the appellants will not be able to bear the burden of the higher rate of wages and dearness allowance fixed in the award. Under such circumstances, the proper thing would have been to remit the matter for reconsideration to the tribunal. But, as so many years have elapsed and as a remand will only entail more expenses and trouble to the parties concerned, we ourselves have considered the matter in the light of the material on record. On such materials, we have come to the conclusion as to what would be a reasonable basis to be adopted in the matter of fixing wages and dearness allowance.
5. Having considered all the circumstances, we are of the opinion that the basic wages now fixed by the tribunal should be reduced by 20 per cent. That is, 80 per cent. of the basic wages now fixed by the tribunal will be the basic wages that are to be paid by the managements concerned to the workmen.

6. Regarding dearness allowance, the fixed rate of dearness allowance awarded by the tribunal will stand. But so far as the sliding scale provided in the award, is concerned, namely, variation of one rupee on every five points of increase or decrease, that direction will have effect only with effect from today.

7. We make it clear that if any industries are paying wages or dearness allowance at rate higher than what has been fixed by us, the workmen will be entitled to get at the same rates as they are being paid now and our order will not affect those workmen, nor the liability of the industries concerned so paying at those rates.

8. So far as the grant of additional two days festival holidays is concerned, we do not think that the tribunal was justified in departing from the original number of festival holidays granted by the industries, namely, ten.

9. We also make it clear that the directions given in this judgment will govern only those parties who have not settled their claims as between themselves otherwise.

10. It is represented by Mr. D. N. Mukherjee, learned counsel appearing for the appellants in Civil Appeal No. 603 of 1967 that appellants Nos. 5, 42 and 135 have settled their disputes with their workmen. As such they are allowed to withdraw from the said appeal.

11. The award of the Industrial Tribunal is modified to the extent indicated above and in all other respects it will stand. The appeals are disposed of accordingly. There will be no order as to costs in the appeals.

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