M/S. Polychem Limited

Vs

R. D. Tulpule, Industrial Tribunal, Bombay and Another

Civil Appeals Nos. 2162 and 2163 of 1970

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

15.03.1972

JUDGMENT

DUA, J. -

1. The short but important point raised in these two appeals by special leave relates to the validity of that part of the award of the Industrial Tribunal, Maharashtra, Bombay, by which the demand for vacation allowance of the workmen of the appellants Messrs. Polychem Ltd., Bombay, at the same rate as is granted to its higher staff both at the head office and at its Chember plant was allowed. These two appeals are directed against the impugned award in two references under Section 10(1)(d) of the Industrial Disputes Act, 1947, one of which (Ref. No. 284 of 1968) related to the demands of the head office staff and the other (Reference No. 19 of 1969) to the workmen of Chember plant.

2. The impugned portion of the award, dated June 9, 1970, reads as under :

> "The only other demand which is now common to both the references is the demand for the vacation allowance. It appears that the Company pays to its Officers or other staff drawing Rs. 600 and more as basic wage one month's salary for vacation in case his leave exceeds 15 days and is not accumulable. The demand of the workmen is that the minimum should be Rs. 300 and the maximum Rs. 2,000. It is pointed out for the Company that this was refused by the Tribunals in Burmah Shell and Voltas. The Union on the other hand contended that it was allowed in the banks and refineries by settlements though refused by the Tribunals. The plea of discrimination, it was pointed out, has been rejected by the Tribunals [see Parke Davis, 1966 ICR 151 and Alembic Chemical, 1961-I LLJ 328]. I, however, feel that this Company can afford to pay this allowance to its workmen and avoid dissatisfaction. In socialistic countries this is considered as an amenity to the workmen which should be provided such as subsidized or free vacation at health resorts. The ideal of wage fixation is the living wage while the national ideal was envisaged in the Constitution in a socialistic State. The Company can join others as the trend seems to be appearing in this region. It ensures a more contented and healthy workmen. I therefore award vacation allowance to the workmen at the same rate as the staff with the same conditions."

3. The appellant's learned counsel, Shri. S. V. Gupte, challenged this portion of the award on the ground that there is no evidence in support of the conclusions arrived at by the Tribunal and that it proceeds on grounds which are irrelevant and contrary to the settled principles relating to industrial disputes. Nowhere in the region is vacation allowance granted in similar industries and there is thus

no comparable instance, contended the counsel, adding that the Senior Assistants in the present case had also not pressed their claim to vacation allowances. It was further urged that workmen in the appellant's industry get various other amenities like, dearness allowance, according to the revised textile rates, overtime wages, lunch allowance (not allowed to officers), gratuity (with qualifying period of 5 years as against 15 years for officers), uniforms and medical facilities. Our attention was drawn to a prepared statement produced before us on behalf of the appellants for showing the difference in the pay packet of workmen employed at the appellant's head office as a result of the award given in Reference No. IT 284 of 1968. The respondent did not accept this statement saying that it was based on the interpretation placed by the appellant to support its case. In regard to overtime allowance and other facilities referred to by Shri Gupte, the learned Counsel relying, inter alia, on another statement relating to facilities accorded to the workmen in 1970-71 produced before us, submitted that the workmen were getting numerous other benefits not available to officers. This submission was however, sought to be founded on material not on the court record. The learned counsel strongly contended that the real criterion should have been to look to the overall pay structure of the workmen in the light of the standard prevailing in similar industries in the same region. Mere capacity of the appellant to pay should not be the sole criterion, he added. Reference was made to the decision of this Court in Remington Rand of India Limited v. The Workmen, [C.A. Nos. 856 of 1968, 1475 of 1968 and 2119 of 1968, decided on December 10, 1968] where it was observed :

> "As regards the first ground, it is true that in the present case there was no question of the Company being unable to bear the additional burden of lunch allowance. But the fact that an employer is able to bear the burden is not the criterion. The foundation of the principle of industry-cum-region is that as far as possible there should be uniformity of conditions of service in comparable concerns in the industry in the region so that there is no imbalance in the conditions of service between workmen in one establishment and those in the rest. The danger otherwise would be migration of labour to the one where there are more favourable conditions from those where conditions are less favourable. Therefore, the mere fact that a particular concern can bear an additional liability would be itself be no ground to impose upon it such extra obligation. Equally important is the fact the wage structure prevailing in the appellant Company is undisputably fair and the dearness allowance paid to the workmen has been, as aforesaid, linked with the index of cost of living. These must take care of the rise in the costs of living from time to time. If, therefore, the Company were to be compelled to pay lunch allowance to all workmen including those who work at the offices it would in fact mean a double provision for the constituent of the cost of food already provided for in the wage scales and the rates of dearness allowance. The force of this aspect was recognised by this Court in Mclean & Co. Ltd. v. Workmen. [(1964) 5 SCR 568, 571]"

It was said on behalf of the respondents that in the case cited there was no discriminatory treatment in the same concern among the employees of different grades of salaries at the same place. The requirements of providing lunch to those who could not return to the office from outdoor work outside the city limits, as was the fact in the cited case, according to the respondents, furnish a distinguishing feature in that case from the present. Next reliance was placed by Shri Gupte on the following observations in Alembic Chemical Works Co. Ltd. v. The Workmen [(1961) 3 SCR 297 at 306] :

> "Then it is urged that the provision made by the award for privilege leave introduces

> discrimination between the clerical staff covered by the present reference and operatives covered by the earlier awards made by the same Tribunal. We were told that operatives had made a similar claim for privilege leave before the same Tribunal, and the said claim had been rejected. The argument is that the provision for privilege leave made by the present award would create discontent amongst the operatives to whom similar leave has been denied, and that would disturb industrial peace. We are not impressed by this argument. It is not seriously disputed that a distinction has generally been made between operatives who do manual work and clerical and other staff; in fact the appellant's standing orders themselves make different relevant provisions for the two categories of its employees. It is also not disputed that in practice such distinction is made by comparable concerns, and awards based on the same distinction are generally made in respect of the two separate categories of employees. We are, therefore, unable to appreciate the argument that in granting privilege leave to the present staff the tribunal has either overlooked its earlier award or has made a decision which suffers from the vice of discrimination. The practice prevailing in comparable concerns and the trend of awards both seem to show that a distinction is generally made between the two categories of employees, and since the said distinction is perfectly justifiable no question of discrimination can arise."

According to the respondents the distinction between operatives doing manual work and clerical and other staff may be justified but that is not the case here. Besides, in the reported case this Court, in its concluding part said that it was not satisfied that any case for interference under Article 136 had been made out whereas in the present case, the appellant wants this Court to interference and reverse the impugned part of the award on the ground that it is grossly erroneous and unjust. Reference was then made on behalf of the appellant to the decision in Delhi Cloth & General Mills Co. Ltd. v. Workmen, [(1969) 2 SCR 307] emphasis being laid on the following passage at p. 327 :

> "But in the branch of law relating to industrial relations the temptation to be crusaders instead of adjudicators must be firmly resisted. It would not be out of place to remember the statement of the law made in a different context - but nonetheless appropriate here - by Douglas, J., of the Supreme Court of the United States in United Steel Workers of America v. Enterprise Wheel and Car Corporation [(1960) 363 US 593] :
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> .....as arbitrator.....does not sit to dispense his own brand of industrial justice. He may of course look for guidance from many sources, yet his award is legitimate only so long as it draws its essence from the collective bargaining agreement. When the arbitrator's works manifest an infidelity to this obligation, courts have no choice but to refuse enforcement of the award.'
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> We may at once State that we are not for a moment suggesting that the law of industrial relations developed in our country has proceeded on lines parallel to the direction of the law in the United States."

4. The respondents, on the other hand, laid more emphasis on the last potion of the above observations, submitting that the problems of our country in regard to labour welfare at the present stage of our industrial development, particularly in the background of our egalitarian socialistic pattern of society as visualised in our Constitution, are materially different from the labour problem's requiring solution in the developed American society under the Country's Constitution.

The following passage from pp. 326-327 from the D.C.M's case (supra) is also worth quoting :

> "We consider it right to observe that in adjudication of industrial disputes settled legal principles have little play; the awards made by industrial tribunals are often the result of ad hoc determination of disputed questions, and each determination forms a precedent for determination of other disputes. An attempt to search for principle from the law built up on those precedents is a futile exercise. To the courts accustomed to apply settled principles to facts determined by the application of the judicial process, an essay into the unsurveyed expanses of the law of industrial relations with neither a compass nor a guide, but only the pillars of precedents is a disheartening experience. The Constitution has however invested this Court with power to sit in appeal over the awards of Industrial Tribunals which are, it is said, founded on the somewhat hazy background of maintenance of industrial peace, which secures the prosperity of the industry and improvement of the conditions of workmen employed in the industry, and in the absence of principles precedents may have to be adopted as guides - somewhat reluctantly to secure some reasonable degree of uniformity of harmony in the process."

5. In our view the ultimate object of industrial adjudication in our country is to hold the growth and progress of national economy and for realising that object the industrial disputes are settled on principles of fairplay and justice, harmonising the conflicting claims of capital and labour with full awareness of the current of socio-economic trends of thought. Our industrial law is, therefore, expected to effectively secure to the workers conditions of service reasonably conducive to the improvement of their social and economic standard of living and their moral and material development. The existing peculiar problems, relating to industrial labour in our country, having their roots in the historical background of our social, economic and political conditions, have little in common with the current labour problems of America or other developed countries. We, must therefore, guard ourselves against the temptation of too readily and indiscriminately following the American line of thought. Shri Gupte next referred us to the decision in J.K. Iron & Steel Co. Ltd. v. The Iron and Steel Mazdoor Union, Kanpur, [(1955) 2 SCR 1315] relying on the following passage at p. 1322 :

> "In Bharat Bank Ltd. v. Employees of Bharat bank Ltd., [1950 SCR 459, 497] this Court held by a majority that though these Tribunals are not courts in the strict sense of the term they have to discharge quasi-judicial functions and such are subject to the overriding jurisdiction of this Court under Article 136 of the Constitution. Their powers are derived from the statute that creates them and they have to function within the limits imposed there and to act according to its provisions. Those provisions invest them with many of the 'trappings' of a Court and deprive them of arbitrary or absolute discretion and power. There is, in our opinion, an even deeper reason which is hinted at in the judgment of Mahajan, J., (as he then was) at page 500 where he says that 'benevolent despotism is foreign to a democratic Constitution'. That, in our opinion, is the heart of the matter."

To give relief to the workmen merely because the appellant can bear the financial burden is, according to Shri Gupte, hit by these observations. According to the respondents, on the other hand, the observations relied upon have to be construed in their own context and so read they do not prohibit the industrial adjudication from granting just and fair remuneration to the labour in lieu of its contribution to the prosperity of the industry, provided the employer can, consistently with its

own fair and just claim in lieu of its contribution to the prosperity of the industry and without detriment to its maintenance and detterment, bear the financial burden. The respondents' learned counsel Shri Chaudhri drew our attention to the admitted fact that in the case of Burmah Sell, Esso and Caltex Refineries vacation allowance (which was considered to be identical with travelling allowance) was granted to the workmen by way of settlement and submitted that those industries, though different, being refineries, are in the same region and the general standard of remuneration of workment in that region performing similar duties and functions, should not be materially different. The fact that those industries granted such allowance by settlement shows that such a demand by the workmen has not been considered by those industries to be unjust or unacceptable. Harmonious standardisation of wages in a region in the absence of marked difference in the character of the duties and functions of labour, according to the respondents, reduces the factors contributing discontentment and promotes the chances of the workers' commitment to the industry whereas unjustified differential treatment tends to serve as a potential source of industrial unrest. Shri Chaudhri also refereed us to the decision in Express Newspapers (P) Ltd. v. Union of India, [1969 SCR 12] where at p. 81 it is observed :

> "It will be seen from this summary of the concepts of the living wage held in various parts of the world that there is general agreement that the living wage should enable the male earner to provide for himself and his family not merely the bare essentials of food, clothing and shelter but a measure of frugal comfort including education for the children, protection against ill-health, requirements of essential social needs, and a measure of insurance against the more important misfortunes including old age.
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> Article 43 of our Constitution has also adopted as one of the directive Principles of State Policy that :
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> "The State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities.....;
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> This is the ideal to which our social welfare State has to approximate in an attempt to ameliorate the living conditions of the workers."

6. Shri Gupte, however, emphasised that in India living wage on standard prevalent in more advanced countries is not possible in the present level of our national income.

7. Wage policy relating to workmen appears to be a complex and sensitive area of public policy. The reason is plain. The relative status of workmen in the society, their commitment to industry and their attitude towards the management, their motivation towards productivity and their standard and way of life, are all conditioned by wages. It is accordingly not a purely economic policy in which the employer and the employee alone are interested. Besides the worker and the management, the consumer and the society at large and a fortiorari the State, are also vitally interested, and no wage policy can ever be applied in vacuum in disregard of the realities of the social and economic conditions in our country. Considering the question of wages in the background of the Directive Principles enshrined in our Constitution a wage structure should serve to promote, a fair remuneration to labour ensuring due social dignity, personality and security, a fair return on capital, and strengthen incentives to efficiency, without being unmindful of the legitimate interest and expectation of the consumer in the matter of prices. Guided by this principle, if the financial

capacity of the industry permits, the workers should, broadly speaking, be allowed their due share in the prosperity of the industry, to which they have contributed by their labour, so as to enable them, within reasonable limits, to improve their standard of living.

8. Turning now to the facts of the present case we are clearly of the view that the Tribunal has committed a serious error in not considering the other allowances and amenities allowed to the respondents-workmen, and comparing their total wage packet with the total wage packet of those employees to whom the allowance in question has been allowed, when determining this question. The Tribunal has virtually decided the question in issue exclusively on the basis that the employer has the financial capacity to stand the burden of such allowance being granted to the workmen at the same rate as the higher staff, with the same conditions. The difference between the amenities allowed to the workmen and to the staff to whom the vacation allowance is granted must in law and justice be looked into and the question then decided whether or not the present workmen's demand is justified. The principle of region-cum-industry has no doubt to be kept in view but then the comparable industries in the region have to be considered from all the relevant aspects which have been laid down by this Court in various decisions to which it is unnecessary to refer, the principle being well settled. The fact that in the refineries in the region similar allowance is granted as a result of settlement cannot, on that account alone, be considered to be irrelevant because that may appropriately indicate that the demand of the workmen in those industries was not considered unjust. But to what extent that should weight with the Tribunal is for the Tribunal to decide in the light of all the relevant circumstances. The total wage packet of the various categories of employees in the appellant's industry itself, including the question of their nature of duties and functions, however, deserves to be given primary importance so that there is no reasonable chance of heart-burning and discontentment amongst the different categories of workmen on account of the differential treatment which, though seemingly justifiable, may in real effect, be discriminatory. The importance of appropriate standardisation of wages in the appellant-industry on a proper consideration of the duties and functions of the different categories of employees must be kept in view in deciding the present dispute.

9. We should accordingly allow the appeals, set aside the award and remit the case back to the Tribunal with a direction to decide the dispute after considering all the relevant factors as suggested. In the peculiar circumstances of the case there is no order as to costs.

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