

M/s. Agra Electric Supply Company Limited, Agra

Vs

Workmen

Civil Appeals Nos. 1921 and 1922 of 1973

(V. R. Krishna Iyer, R. S. Pathak JJ)

11.01.1979

JUDGMENT

KRISHNA IYER J. –

1. Fascinating, superficially are the two submission made by Shri B. Sen appearing for the appellant-Management challenging the direction in the award of the Industrial Tribunal for payment of gratuity by way of retirement benefit to certain workmen who had raised an industrial dispute on the score that their retirement was illegal and premature. The two contentions are : (1) that the terms of reference which limit the jurisdiction of the Tribunal did not cover the question of payment of gratuity at all and therefore, the award pro tanto was bad and (2) that natural justice had been breached by the Tribunal in the awarding gratuity since parties were not at issue on that question at all.

2. It is useful to examine the terms of reference. There are two disputes and two reference, but it is enough if one of them is reproduced :

Whether the employers have retired their workmen Sri. Peerbux (Son of Sri Inam Bux) Bank Peon and Sri Sahadat Ali (Son of Sri Banne Ali) Coolie, Maintenance Department by orders dated May 30, 1970 (Copies attached) in a justified and/ or legal manner ? In nor then to what benefit /compensation are the workmen entitled and with what details ?

It is plain that industrial jurisprudence is an alloy of a law and social justice and cannot be too pedantic in constructing the terms of the a reference respecting a dispute for industrial adjudication. Liberally viewed, we are left with the impression that the Tribunal's construction of the terms of reference is correct. The question referred may be dichotomised. Was the retirement of the workmen legal and justified ? If not, what compensation was payable to them ? The first limb of the reference contains the pregnant impression "justified". It is one thing to say, speaking in terms of industrial jurisprudence that an action is legal. It is another thing to say that it is justified. When the reference is comprehensive enough to cover both these concepts, it is within the jurisdiction of the Tribunal to investigate into the whether the retirement is legal and if legal, whether it is also justified. In the ordinary law of the contracts, when a thing done is legal there is an end of the matter but in industrial law the rigid rules of contract do not govern the situation and an amount of flexibility in the exercise of powers taking liberties with the strict rights of parties is permitted to Tribunals. Relying on a serious of decisions of this Court for this wider ambit of jurisdiction permissible in industrial adjudication, the Tribunal has held that the grievance of the workmen that the their services should come to an end by way of retirement without payment of gratuity is real and

substantial and that the pragmatic considerations justify a direction for payment of gratuity more or less prevalent in many industries in the region. This approach informed by social justice and it is not for us to fault the Tribunal when it makes a direction for payment of gratuity. We read the award in a composite and comprehensive sense as an award that he retirement is justified if it is accompanied by payment of gratuity. The dissection attempted in the submission made by learned counsel is a distortion of the true intendment of the award. In this view, we think there is no substance in the first contention.

3. So far as the submission that the rules of the natural justice have been violated is concerned, we do not consider that any thing grossly unfair has been done. The reference in the award to the practice prevalent at the time is sufficient to warrant the direction made.

4. It has been pointed out to us by Shri B. Sen while the Electrical Undertaking in which these workmen are employed has been taken over by the Government. The State has not yet paid any compensation to the appellant. When seeking recovery of the gratuity amounts directed under the award the authority concerned will first proceed to collect it from out of the compensation payable, and only if it becomes difficult so to do it will proceed against the other assets of the appellant.

5. The interest payable in terms of the earlier Order of this Court namely, six per cent on the amount of gratuity will stands.

6. In this view we dismissed the appeals with costs.

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