Workmen of Metro Theatre, Bombay

Vs

Metro Theatre Ltd., Bombay

Civil Appeal No. 1558(L) of 1978

(V.D. Tulzapurkar,A. Varadarajan JJ)

31.07.1981

JUDGMENT

TULZAPURKAR, J. –

1. This appeal by special leave is directed against the award of the Industrial Tribunal Maharashtra, Bombay, dated September 22, 1977, in Reference (IT) No. 248 of 1975 in the industrial dispute between the respondent and the workmen employed by it and published in Maharashtra Government Gazette on November 3, 1977. Though the demands made by the workers' Union and the adjudication thereon by the Tribunal related to items like wage scale, dearness allowance, extra show allowance, gratuity, service conditions of non-permanent staff and retrospectivity, while granting special leave this Court confined the appeal to three points, namely, (i) retrospectivity of the award, (ii) linkage of dearness allowance to some rational principle and (iii) construction of Section 4(5) of the Payment of Gratuity Act, 1972, and leave was expressly refused in regard to the other grounds mentioned in the special leave petition. We, therefore, proceed to deal with the aforesaid three points on which arguments were advanced before us by counsel on either side.

2. It may be stated that prior to the impugned award the wages and gratuity of the workers were governed by the earlier award in Reference No. 1 of 1968 published on July 3, 1969 which was effective from January 1, 1967 while dearness allowance was governed by the award in Reference No. 440 of 1970 effective from January 1, 1970. Both these awards were duly terminated by notice and fresh demands for revision of wage scales, dearness allowance, etc. effective from January 1, 1974 were submitted by the union to the management on April 15, 1974. The Reference to the Tribunal was made on July 10, 1975 and by the impugned award the Tribunal granted the revision in wage scales and dearness allowance with effect from January 1, 1977. Counsel for the appellant union contended that the Tribunal erred in not granting the revision with effect from January 1, 1974 as demanded and at any rate the same should have been granted from July 10, 1975 being the date of Reference, especially when the Tribunal found the financial capacity of the respondent very sound and admittedly there had been a steep rise in the cost of living index. He pointed out that the Tribunal while refusing to grant retrospective effect had erroneously observed that there will be "too much financial burden on the company" as, according to him, such additional burden could not have been more than Rs. 1,00,000 or Rs. 1,20,000 a year during the three years 1974, 1975 and 1976. In support of his contention counsel referred to three decisions of this Court, namely, Wenger & Co. v. Workmen ((1963) 2 LLJ 403 1963 Supp 2 SCR 862 : AIR 1964 SC 864 : (1963-64) 24 FJR 307), Bengal Chemical and Pharmaceutical Works Ltd. v. Workmen ((1969) 1 LLJ 751 : (1969) 2 SCR 113 : AIR 1969 SC 360 : (1969) 35 FJR 337) and Hydro (Engineers) Pvt. Ltd. v. Workmen ((1969) 1 LLJ 713 : (1969) 1 SCR 156 : AIR 1969 SC 182 : (1969) 35 FJR 130).

3. It is difficult to accept this contention and interfere with the discretion exercised by the Tribunal in the matter which can be done only if it is shown to have been unreasonably exercised. Under Section 17-A(4) of the Industrial Disputes Act, 1947 it is a matter of discretion for the Tribunal to decide having regard to the circumstances of each case from which date its award should come into operation and no general rule can be laid down as to the date from which the Tribunal should bring its award into force and this Court shall not interfere with the Tribunal's order in that behalf unless substantial ground is made out showing unreasonable exercise on its part. Even the three decisions cited by the counsel clearly bring out the aforesaid position in law. The Tribunal was deciding the Reference in August 1977 and though the additional burden may not have been more than Rs. 1,00,000 or Rs. 1,20,000 per year for the three years 1974, 1975 and 1976 if retrospective effect was given to the revision, no material was placed before the Tribunal by either party as to whether the profits earned by the Company for the said three years had been disbursed or were still available with the company at the time of making the award - a factor relevant on the question of granting retrospectivity. Even before us no light could be thrown on the point by counsel on either side. Further there was on record a statement showing the financial position of the company for the years 1968 to 1975 (year ending being August 31) produced by the appellant union itself at Ex. U-5 which clearly showed that the profits of the company before taxation and depreciation had dwindled consistently for the years 1973, 1974 and 1975, such profits for each of the said three years being Rs. 6,80,912, Rs. 6,51,181 and Rs. 5,70,884. Presumably it was in view of such decreasing trend in the profits made by the company during the three years that the Tribunal felt that it would be proper to give the revision in wage scales and dearness allowance only from January 1, 1977 onwards and not to give any retrospective effect. It cannot be said that the discretion has been unreasonably exercised by the Tribunal.

4. Coming to the second point of linkage of dearness allowance with some rational principle the Union's contention before the Tribunal was, and the same contention has been reiterated by the counsel for the Union in the appeal - that the dearness allowance should be linked with the cost of living index and Consumers' Price Index Number. It was pointed out that the Bombay Working Class Consumers' Price Index was 800 in 1970 (when the earlier award in the matter of D.A. was given), that it had gone up to 1372 in 1977 and that, therefore, dearness allowance on Index No. 999-1000 should be fixed on 4 weekly basis with a variation for every ten points rise or fall. But the Tribunal negatived the contention and fixed the dearness allowance on the normal principle of industry-cum-region and the only reason for not linking it to the cost of living index was that such linkage did not obtain in any concern falling in the category of Cinema Exhibiting Industry which could not be compared with manufacturing industries like textile where such linkage operated. Counsel for the appellant Union pointed out that the same adjudicator (Shri B.B. Tambe) as Sole Arbitrator in Reference (VA) No. 1 of 1979 in the industrial dispute between M/s. Alankar Theatre and 38 other theatres of Bombay (cinemas falling in classes A-1, A, B and C) and the workmen employed under them had made an award on June 27, 1980 (published in Maharashtra Government Gazette on October 9, 1980) wherein dearness allowance has been linked with the rise in the cost of living index and the Consumer's Price Index Number. The result has been that in Cinema Exhibiting Industry all the other 39 theatres will be paying to their workers dearness allowance linked with the cost of living index while in the case of workmen of Metro Theatre there will be no such linkage which would be contrary to normal uniformity which is always desirable in one and the same industry. We find considerable force in this contention urged by counsel for the appellant Union. On the other hand, counsel for the Company pointed out that the aforesaid award of Shri Tambe in Reference (VA) No. 1 of 1979 dated June 27, 1980 is under challenge before the Bombay High Court in Writ Petition 79 of 1981 at the instance of the management and as such the question

whether dearness allowance in the Cinema Exhibiting Industry should be linked with the cost of living index is still pending consideration before the High Court. Moreover, he urged that there are certain peculiar features of the Cinema Exhibiting Industry by reason of which it would be inappropriate to link the dearness allowance payable to a worker in that industry with the cost of living index. For instance, he pointed out, that unlike manufacturing concerns, there is little scope for enhancing the profits in Cinema Exhibiting Industry inasmuch as the principal source of income being box-office collection the same is connected with and limited by the seating accommodation in any theatre. However, notwithstanding this limiting factor the same adjudicator has granted the linkage in case of 39 cinema houses in Bombay which shows that other factors must have weighed with him as outweighing this limiting factor. We are clearly of the opinion that uniformity on this aspect is highly desirable in one and the same industry. The main reason for the refusal to grant such linkage (i.e. linking the D.A. with the cost of living index) having disappeared the question will have to be considered afresh. We do not think that adequate and sufficient material is available on the record of this case before us to decide this issue satisfactorily. Further it would not be advisable to direct the parties before us to intervene in the matter pending before the High Court, for, material which may be peculiar to Metro Cinema may have to be produced and considered before the issue is properly decided. We, therefore, remand this issue back to the Industrial Tribunal for disposal in accordance with law with a direction that the Tribunal should give opportunity to both the parties to produce additional material and after hearing them should decide the same afresh. It will be open to the management to raise all contentions including the contention that dearness allowance should not be linked with cost of living index but should be granted on normal principle of industry-cum-region formula. We wish to make it clear that in case the issue is answered by the Tribunal in favour of the Company, the appellant Union shall not raise any contentions on the quantum of dearness allowance that has been allowed by the Tribunal in its award on the basis of industry-cum-region formula, for the quantum aspect of the revision has become final by reason of the limited leave that was granted by this Court while admitting the appeal.

5. We shall next deal with the last question pertaining to the construction of Section 4(5) of the Payment of Gratuity Act, 1972. The question of construction arises this way. It appears that the existing scheme of gratuity in the Metro Theatre, Bombay was as per the award in Reference (IT No. 1 of 1968) and the same had been modified by an agreement between the parties in this Court, which, the Union contended, had become extremely inadequate and desired to have a more beneficial scheme in some respects for its workers. Counsel for the Union urged that it was open to the Tribunal to give more benefits than were available under the scheme contemplated by the Act and in that behalf reliance was placed on Section 4(5) of the Act. Counsel for the Company contended that the expression 'award' in Section 4(5) meant an existing award and as such if under the existing award better terms were given to the employees these will not be affected. It was also urged that the Act was exhaustive and was intended to ensure uniform payment of gratuity to the employees throughout the country. The Tribunal accepted the contention of the management and held that it could not go beyond the scheme contemplated by the Act, and, therefore directed that the gratuity scheme as per the Act shall prevail subject to the modifications arrived at under the terms of settlement, if any, if they were more beneficial.

6. Counsel for the appellant Union urged before us that no standardisation of any gratuity scheme was contemplated by the Act as was clear from the express provisions contained in Section 4(5) and Section 5 of the Act and that enactment being a beneficial piece of legislation Section 4(5) should be construed in favour of the employees and that, therefore, the Tribunal's view that it could not grant anything beyond the scheme contemplated by the Act was erroneous. In support of such construction reliance was placed upon this Court's decision in Alembic Chemical Works Ltd. v.

Workmen ((1961) 1 LLJ 328 : (1961) 3 SCR 297 : AIR 1961 SC 647 : (1961-62) 20 FJR 78) where a similar provision under the Factories Act was construed as conferring power on the Tribunal to fix the quantum of leave on a scale more liberal than the one provided by the Act. We find considerable force in this submission.

7. Section 4(1) of the Act provides that the gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years - (a) on his superannuation, or (b) on his retirement or resignation, or (c) on his death or disablement due to accident or disease; sub-section (2) provides that for every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of fifteen days' wages based on the wages last drawn by the employee and sub-section (3) provides that the amount of gratuity payable to an employee shall not exceed 20 months' wages. This is the main scheme of gratuity contemplated by the Act. Then comes sub-section (5) which runs thus :

> Nothing in this section shall affect the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer.

8. The question for consideration is whether the expression 'award' occurring in the above provision means an existing award or would include any award whatsoever to be made by an adjudicator under the Industrial Disputes Act. In the first place there is nothing in the provision which limits the expression 'award'. Secondly, it cannot be and was not that under the above provision a gratuity scheme obtaining under an existing agreement or contract could be improved upon by a fresh agreement or fresh contract between the employer and the employee and if that be so there is no reason why the expression 'award' should be construed as referring to an 'existing award' and not to include a fresh award that may be made by an adjudicator or an industrial court improving in favour of the employees the scheme obtaining under the Act or the existing award. Thirdly, the very fact that under the above provision better terms of gratuity could be obtained by an employee by an agreement or contract with the employer notwithstanding the scheme of gratuity obtaining under the Act clearly suggests that no standardisation of the gratuity scheme contemplated by the Act was intended by the Legislature. This also becomes amply clear from the provisions of Section 5 which confer power upon the appropriate Government to exempt any establishment to which the Act applies from the operation of the provisions of the Act if in its opinion the employees in such establishment, are in receipt of gratuity benefits not less favourable than the benefits conferred under the Act. Therefore, on true construction we are clearly of the view that the expression 'award' occurring in the above provision does not mean and cannot be confined to 'existing award' but includes any award that would be made by an adjudicator wherein better terms of gratuity could be granted to the employees if the facts and circumstances warrant such grant. It is true, as has been observed, by this Court in State of Punjab v. Labour Court, Jullundur ((1980) 1 SCR 853 : (1980) 1 SCC 4 : 1980 SCC (L & S) 123) that the Act enacts a complete Code containing detailed provisions covering all essential features of the scheme for payment of gratuity. But it is also clear that the scheme envisaged by the enactment secures the minimum for the employees in that behalf and express provisions are found in the Act under which better terms of gratuity if already existing are not merely preserved but better terms could be conferred on the employee in future. In other words, the view taken by the Tribunal that it could not go beyond the scheme of gratuity contemplated by the Act is clearly erroneous.

9. The decision of this Court in Alembic Chemical Works Limited ((1961) 1 LLJ 328 : (1961) 3 SCR 297 : AIR 1961 SC 647 : (1961-62) 20 FJR 78), which was under the Factories Act, also lends support to such beneficent construction. In that case the Industrial Tribunal had fixed the quantum

of leave, privilege and sick, for the staff of a manufacturing concern on a scale more liberal than the one in force for the operatives of the same concern. It also made necessary direction regarding accumulation of such leave. The quantum of leave so fixed by the Tribunal was larger than the quantum of leave presicribed under the provisions of Section 79(1) of the Factories Act. It was contended that Section 79 of the Act was exhaustive and had selfcontained provisions with regard to the granting of annual leave with wages to the employees, that it had the effect of introducing standardisation in the matter of leave and that no addition to the said leave could be made either by a contract or by an award. This Court negatived the said contention on the language of Section 79(1) itself. Additionally, provisions of Section 78 were relied upon which recognised exemptions to the leave prescribed by Section 79(1). Section 78(1) provided that provisions of Chapter VIII (including Section 79(1)) shall not operate to the prejudice of any right to which a worker may be entitled "under any other law or under the terms of any award, agreement or contract of service", and a proviso to this sub-section laid down taht when such award, agreement or contract of service provided for longer annual leave with wages than provided under the Chapter, the worker shall be entitled only to such longer annual leave. It was contended that the expression "any award" in Section 78(1) applied only to existing award. The Court negatived this contention and held that the contention was plainly inconsistent with a fair and reasonable construction of the said provision and that Section 78(1) protected not merely awards, agreements or contracts of service then existing but also those that would come into existence later. In the instant case also we are clearly of the opinion that the pharse "under any award, agreement or contract with the employer" occurring in Section 4(5) is intended to cover future awards, agreements or contracts with the employer since existing better terms of gratuity are intended to be protected by issuance of a notification under Section 5 of the Act.

10. We may also state here that in the other adjudication done by the same adjudicator (Shri B.B. Tambe) as the Sole Arbitrator in Reference (VA) No. 1 of 1979 (M/s. Alankar Theatre and 39 other Theatres v. The Workmen) he has come to a contrary conclusion and has held that under Section 4(5) of the Payment of Gratuity Act an adjudicator can grant better terms of gratuity and has actually proceeded to grant better terms of gratuity to the workmen employed in all the theatres concerned in that Reference (vide para 140 of the Award). Realising this position, counsel for the company before us fairly conceded that the employees in the Metro Cinema would also be entitled to better terms of gratuity - the same as given to employees in other cinema houses. Counsel for the parties, therefore, agreed before us that gratuity scheme as set out by Shri Tambe in para 140 of his award dated June 27, 1980 in Reference (VA) No. 1 of 1979 should apply to the workmen of Metro Cinema. We accordingly, direct that the gratuity scheme as set out in paragraph 140 of the above award would be applicable to the workmen of Metro Cinema with effect from January 1, 1977.

11. In the result the appeal is partly allowed on the point of gratuity as indicated above and on the question of linkage the appeal is remanded to the Tribunal for disposal according to law as directed above. The appeal as regards retrospectivity is dismissed.

12. In the circumstances the parties will bear their own costs.

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