

Govardhan Prasad and Others

Vs

Management of M/S. Indian Oxygen Ltd.

Civil Appeals No. 1556 (NL) of 1982

(D. A. Desai, A. Varadarajan, O. Chinnappa Reddy JJ)

24.08.1983

ORDER

1. This appeal by special leave arises out of an order of the Labour Court, Delhi in LCA No. 7 of 1977 by which the application made by the ten workmen employed by the respondent-Indian Oxygen Ltd. ('Company' for short) and stationed at Ghaziabad under Section 33-C(2) of the Industrial Disputes Act was rejected upholding the preliminary objection raised on behalf of the Company. The preliminary objection raised on behalf of the respondent was that an application under Section 33-C(2) of the Industrial Disputes Act was not maintainable because the relief claimed is not merely a monetary computation of an existing benefit but it is a substantive demand for changing the dearness allowance formula applicable to the applicant-workmen. After upholding the preliminary objection raised on behalf of the respondent-employer Company, the Labour Court dismissed the application. Hence this appeal by special leave.

2. A mere narration of factual matrix would expose the utter hollowness of the preliminary objection raised on behalf of the respondent. Ten workmen who applied for monetary computation of existing benefit, namely, that the dearness allowance formula applicable to them was the one awarded by the Industrial Tribunal, Delhi in Reference I.D. No. 88 of 1973 in respect of workmen employed in the factory including general staff (employed in Delhi Branch), were stationed at Ghaziabad which can appropriately be described as part of Delhi agglomeration or a suburb of Delhi though technically it forms part of State of Uttar Pradesh. In reference I.D. No. 88 of 1973, the Industrial Tribunal by its Award dated October 22, 1974 directed as under :

The dearness allowance payable to all categories of workmen employed in Factory including general staff (employed in Delhi Branch) should be linked with consumer price index for industrial workers in Delhi prepared by Labour Bureau, Simla from July 1, 1973 as has been done in the case of office staff in Delhi Branch in pursuance of the award of the Industrial Tribunal in I.D. No. 40 of 1970.

It is admitted that the Delhi based workmen of the Company are governed by the dearness allowance formula as per the award in Reference I.D. No. 88 of 1973.

3. The ten workmen who moved the Labour Court under Section 33-C(2) stated that for all practical purposes they are under the general superintendence and control of the Delhi branch and therefore, the expression in Reference I.D. No. 88 of 1973 "including general staff (employed in Delhi Branch) ' would comprehend the workmen employed by the Company and stationed at Ghaziabad. A mere common sense view would dictate that the claim made is unassailable and unquestionable. It is not a case of a fresh demand made by the workmen. The question raised was one of interpretation

of award to determine its coverage when computing monetary benefit admissible to workmen. Section 33-C(2) provides that "where any workmen is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or/as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government". What the workmen contended before the Labour Court was that the dearness allowance paid to them is not according to the award by which they are governed as being included in the expression 'staff employed in Delhi Branch'.

4. It was not disputed that for all administrative and managerial control, workmen stationed at Ghaziabad are apart and parcel of the staff employed in Delhi Branch. And this ought to be so because Ghaziabad is hardly at a distance of 20 kms. from Delhi. Secondly, the price structure prevalent in Delhi and Ghaziabad would not be materially different. And when the expression used in the award is general staff employed at Delhi Branch, obviously those workmen who are under the administrative and managerial control of Delhi Branch would be included in the expression. Obviously, therefore, the dearness allowance admissible to the appellant-workmen would be according to the award by which dearness allowance is now being paid to those working in Delhi Branch. Dearness allowance having not been paid in accordance with the award, it was quite legitimate for the workmen stationed at Ghaziabad to move the Labour Court under Section 33-C(2) and there was no question of making any fresh demand and seeking an adjudication thereof.

5. Any other view would be wholly unjust and unfair. As pointed out earlier Ghaziabad is hardly at a distance of 20 kms. from Delhi and is being for all practical purposes treated as suburb of Delhi. Now if the contention of the respondent-Company were to prevail, the workmen stationed at Ghaziabad would be governed by the All India Consumer Price Index, Calcutta though their equals at a distance of 20 kms. would be governed by a different dearness allowance formula. This is unthinkable when providing norms for healthy industrial relations. Viewed from this angle also the contention of the appellant-workmen must prevail.

6. Accordingly, this appeal is allowed and the decision of the Labour Court in LCA No. 7 of 1977 upholding the preliminary objection of the respondent-Company is quashed and set aside and the preliminary objection is overruled and the matter is remitted to the Labour Court to proceed to compute the monetary benefit as expeditiously as possible and preferably within three months from today. The appeal is allowed to that extent with costs quantified at Rs. 2500.

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