

# CALCUTTA HIGH COURT

Continental Commercial Co. Pvt. Ltd

Vs.

Government of West Bengal

Civil Revn. Case No. 2575 of 1959

(B.N. Banerjee, J.)

09.08.1961

## JUDGMENT

### **B.N. Banerjee, J.**

1. As between respondent 3, Continental Commercial Company (Private), Limited, (hereinafter referred to as the "company") and their workmen (the petitioners herein), there had been a settlement arrived at in course of a conciliation proceeding, as far back as 19 July 1949, by which disputes between them, inter alia, concerning pay scale, dearness allowance and sick leave were settled as hereinafter appearing:

"(1) Basic pay.--Special grade-- ₹ 130-10-200 (at the discretion of the company and on the merit of the employees concerned)--

Grade A-- ₹ 70-4-134.

Grade B-- ₹ 60-2/8-90 (Matriculate),

Grade C-- ₹ 55-2/8-80 (non-Marticulate).

(2) Dearness allowance.--Grade A-- ₹ 40, Grades B and C-- ₹ 35.

(3) Mechanic apprentices.--The maximum period of apprenticeship should ordinarily be 1 to 1 years, Naturally at the end of one year or 1 years he should either be absorbed as a permanent worker or discharged with the necessary certificate of training, provided of course he has qualified for such a certificate. No one should be kept on apprenticeship beyond this period except on his own request.

(4) Semi-skilled mechanic--Basic pay ₹ 35. Dearness allowance ₹ 25.

(5) Skilled mechanic--Minimum basic pay would not be less than ₹ 60 per month and

minimum dearness allowance not less than ₹ 35 per month.

(6) Darwans.--Basic pay ₹ 30-1-45. Dearness allowance ₹ 25.

(7) Peons.--Basic pay ₹ 25-1-40. Dearness allowance ₹ 25.

(8) Coolie and bearers.--Basic pay ₹ 20-1-45. Dearness allowance ₹ 25 minimum.

Regarding sick leave it was settled under the agreement that it would remain at the discretion of the company.

2. The petitioners, however, made a grievance that the aforesaid settlement was not fully implemented by the company. In the year 1956, the workmen of the company formed themselves into a new trade union and started agitation over & number of their grievances, including grievances over pay scale, dearness allowance and sick leave. Failing to get redress from the company, through amicable method, the workmen sent a charter of demand to the company, on 27 August 1956, in which, amongst other demands, they also made fresh demands regarding leave, dearness allowance and scale of pay. Since no amicable solution of the demand could be found, the State Government referred the following disputes for adjudication by an industrial tribunal:

- (1) Dearness allowance;
- (2) holidays;
- (3) sick leave;
- (4) working hours;
- (5) pay scale; and
- (6) gratuity for period not covered by the provident, fund.

The tribunal made an award which was published in the Calcutta Gazette, dated 2 April 1959.

3. So far as the award regarding holidays, working hours and gratuity is concerned, I am not concerned in this rule, because the parties have accepted those portions of the award.

4. So far as the demand concerned, dearness allowance, sick leave and pay scale, the tribunal held as follows:

"In the present case the parties did not fix date or the period of operation of the settlement (vide annexure A to the written statement of the union). The settlement, dated 19 July 1949, would, therefore, in terms of the provisions as already referred to, would continue to be binding on the parties until terminated by either party by giving two months' notice. In the present case neither party alleged or proved termination of the settlement in the manner as already indicated.

In the circumstances, I find that the settlement, dated 19 July 1949, has still been continuing, to be binding on the parties to the dispute. In view of the said fact, it is

obvious that there should be no adjudication on these issues over subjects covered by the settlement as otherwise this may lead to conflicting results."

5. Dissatisfied with the above quoted portion of the award, the workmen of the company moved this Court and obtained the present rule.

6. Sri Aran Kumar Dutt (Sr.), learned Advocate for the petitioners, made a two-pronged attack on the above quoted portion of the award. He contended, in the first places, that there was no form of notice prescribed by the Industrial Disputes Act or the rules framed thereunder for terminating an agreement of the nature mentioned in Section 19(2) of the Industrial Disputes Act and, therefore, the charter of demand, dated 27 August 1956, should have been taken to be a notice as contemplated by Section 19(2) of the Act. He contended, in the next place, that the company must be deemed to have waived the notice of termination of settlement by participating in the parleys for settlement of the disputes and by making offers in attempted settlement of some of the disputes.

7. So far as the first branch of the attack on the award, made by Sri Dutt, is concerned, the argument is attractive. Section 19(2), as it stood before the amendment by Act XXXVI of 1958, was to the following effect:

"Such settlement shall be binding for such period as is agreed upon by the parties, and if no such period is agreed upon, for a period of six months, and shall continue to be binding on the parties after the expiry of the period aforesaid, until the expiry of two months from the date on which a notice in writing of an intention to terminate the settlement is given by one of the parties to the other party or parties to the settlement."

By the Amendment Act XXXVI of 1958 the words "from the date on which the memorandum of settlement is signed by the parties to the dispute" were added after the words "for a period of six months" appearing in the aforesaid sub-section. The sub-section, as it stood prior to the amendment and as it stands after the amendment, did not and does not contemplate notice of the intention to terminate a settlement being given in a particular form. All that is contemplated is that the notice must be in writing and must convey the intention to terminate the settlement. A charter of demand has to be in writing and such a charter of demand, dated 27 August 1956, was sent by the workmen of the company, in the Instant case. The charter of demand indicated that the workmen were no longer satisfied with the old pay scale, dearness allowance and sick leave and wanted more. Since the demand was not merely concerned with the alleged non-implementation of the original agreement and since the workmen wanted more than what had been given to them under the original agreement, it was apparent that they did not want to remain bound by the old settlement. That may be conceived, it was argued, to have the effect of terminating the old settlement and to raise a new industrial dispute.

8. Sri Phanindra Kumar Sanyal, learned Advocate for the company, invited my attention to the difference in language between Sub-section (2) and Sub-section (6) of Section 19 of the Act. Sub-section (6) of Section 19 is to the following effect:

"Notwithstanding the expiry of the period of operation under Sub-section (3), the award shall continue to be binding on the parties until a period of two months has elapsed from the date on which notice is given by any party bound by the award to the other party or parties intimating its intention to terminate the award."

9. Sri Sanyal emphasized that the notice contemplated under Sub-section (6) of Section 19 need not be separately in writing and therefore even a charter of demand may be treated as sufficient notice intimating the intention of the workmen to terminate an award. But since a notice contemplated under Sub-section (2) of Section 19 has to be in writing. Sri Sanyal contended that it must be physically a separate notice than a mere charter of demand.

10. Deciding a case under Sub-section (6) of Section 19 of the Act, Sinha, J., observed in (*Calcutta Tramways Co. Ltd. v. Special Tribunal and Ors<sup>1</sup>*.) as follows:

"Before I proceed further, it will have to be considered as to what constitutes a notice under Sub-section (6) of Section 19 and in what form it is to be delivered. No form of notice is mentioned in the sub-section itself. Therefore it need not be in any particular form. In a decision of the ***Labour Appellate Tribunal, Bhutoria Jute Mills v. Howrah Zillah Chatkal Mazdoor Union ,1956 L.A.C. 719***, it has been held that a notice under Section 19 of the Act may not be in writing and may be communicated in any manner, provided the party for whom it is intended has sufficient knowledge of the fact constituting it. This is what the Appellate Tribunal said:

'Section 19 was amended very elaborately when Sub-section 19(6) was added to it. The legislature in its wisdom did not consider it necessary to limit the case of notice to one in writing as in the case of termination of settlement under Sub-section (2) of that section. It is an elementary principle of interpretation of a statute that the words be given their natural meaning and that no words of limitation should be introduced where there was none used in the Act. Any other interpretation is likely to lead to absurdity. We therefore hold that a notice under Section 19(6) may or may not be in writing and may be communicated in any manner provided the party for whom it is intended has sufficient knowledge of the facts constituting it.'

In that case, certain unions submitted their charter of demands. Others wrote letters and there were some who expressed the desire not to be bound by the award in other ways. The tribunal held that the employers fully knew that the workers did not wish to be governed any further by the award and that the relevant award had been validly terminated as contemplated by Section 19(6) of the Act. In another decision of the Labour Appellate Tribunal, Workmen employed by ***New Standard Engineering Co. Ltd. v. New Standard Engineering Co., Ltd. 1957--I L.L.J.***

112, the Labour Appellate Tribunal went a step further. There in spite of the existence of an award, the parties went up to Government and asked for a reference. It was held that there was tacit representation by them to Government that the existing award had been legally terminated. I shall presently show that this decision is applicable to the facts of the present case. Coming now to the facts of the present case, we find that two documents which are said to constitute a notice of termination are—

- (a) charter of demands, dated 7 March 1958; and
- (b) the strike notice following it.

In this charter of demands, which was based on a resolution passed at general meeting held under the joint auspices of the various unions of workmen, fourteen headings have been set out. First; of all, there is a demand for improved grade and scale of pay including fixation of minimum wages. The demand is that the minimum basic wages of the middle class employees should be increased to ₹ 90 and that of workmen to ₹ 50 and the grades and scales of workers in all categories should be changed. Next there is a demand with regard to the dearness allowance.

<sup>1</sup> Matter No. 46 of 1959

Thirdly, what is asked for is customary bonus. Then there is a demand for gratuity and provident fund, followed by a demand for house-rent allowance. The demand that every member of the staff should be provided with a service book was made and appears now to have been adjusted between the parties. This charter of demands was followed by a threat that if the demands were not met, there would be a general strike as and from 12 August 1958 to enforce the same. So far as the issues in the present reference are concerned, they deal with improved grades and scales of pay, dearness allowance, house-rent allowance and provident fund. It will be seen therefore that the charter of demands clearly shows that the workers did not wish to be bound by any existing awards. The demands were new demands. I have further stated above in course of the enumeration of the facts that the company wanted all these matters to be considered afresh by an independent authority, preferably a High Court Judge. Therefore, it is abundantly clear that the company had a clear knowledge that the workmen were not satisfied with the awards that had already been made and they themselves represented to Government that a new adjudication was necessary. In my view, the facts of this case come within the mischief of the two decisions of the Labor Appellate Tribunal mentioned above, and I hold that there has been a notice given in terms of Sub-section (6) of Section 19 by the workmen to the company, as also to the Government, to whom copies of the charter of demands and strike notice had been forwarded, intimating their intention to terminate the existing award."

11. Sinha, J., had no occasion to consider the argument of Sri Sanyal in the form that it is out before me and therefore the above judgment is no authority for the proposition contended by Sri Dutt. I agree with Sri Dutt to this extent that a charter of demand is a tacit representation by the workmen not to remain bound any more by a settlement arrived at in a conciliation proceeding.

But although that is so, Sub-section (2) of Section 19 contemplates not a tacit representation but an express representation physically in the form of writing terminating an agreement. That was not done in this case. I have, therefore, to hold that that the provisions of Sub-section (2) of Section 19 were not complied with when the workmen tacitly repudiated the previous settlement of 19 July 1949, and started agitation of their fresh demands.

12. Although that is so, a notice under Section 19(2) of the Act can also be waived by the party to whom the notice is to so sent. In the instant case, after the charter of demands was sent, it appears from annexure E, a letter by the employees' association of the petitioners workmen to the Labor Commissioner, that the employees approached the respondent company on several occasions for an amicable settlement but failed; therefore they requested the Labor Commissioner as follows:

The company's financial position is very sound. Considering all aspects we trust you will take immediate steps for the settlement of the dispute. In case the company is adamant we would request you to refer the case to a tribunal for early adjudication.

The Labor Commissioner convened a conference at his office between the employer and the employees and there was a discussion in the matter between the disputing parties but no further progress was made. By a letter, dated 3 June 1957 (which is annexure G to the petition), the employees' association of the petitioners again wrote to the Assistant Labor Commissioner to call another conference. Thereafter, on 8 August 1957, the employees' association of the petitioners wrote the following letter to the Labor Commissioner:

"Apropos to our discussion in the tripartite conference held on 22 July 1957 we have to state that the company is not very eager to settle the matter amicably. The request for grant of annual increments pending settlement has not been even acceded to by the management. This shows their attitude.

In order to come to a peaceful and amicable settlement, the general secretary of the federation of the mercantile employees' union on our behalf reduced the demands to the lowest possible limit. It appears to us that the management is unable to appreciate this gesture. In the circumstances the association would request you to send your report to the appropriate authorities without further delay so that a tribunal may be set up early.

The matter has already lingered for more than six months and the association members feel that no useful purpose will be served by making further attempts at settlement. Enclosed please find herewith a copy of the resolution passed unanimously in the general meeting of the association."

13. From another letter, dated 10 September 1957 (which is annexure I to the petition) from the employees' association of the petitioners to the Assistant Labor Commissioner, it appears that even certain small concessions, which the company, had at one time, expressed its desire to make

in the conference, the company no longer wanted to respect and that there was no chance of a settlement. In the said letter the employees' association of the petitioners expressly stated that it would be useless to make attempts for a further settlement. At least, on 25 November 1957, the company wrote to the Assistant Labor Commissioner the following letter:

With reference to the talk our representative D.N. Chatterjee had with you on subject-matter on 31 October 1957, we have pleasure in intimating below what we can agree to, provided all the points of reference are taken and considered together (i.e., they stand or fail together) and negotiations are not further protracted:

1. Dearness allowance: It will be increased, effective date of agreement, to all permanent staff, as under:

(a) To all A grade clerks getting ₹ 45 to ₹ 50.

(b) To all B grade clerks getting ₹ 40 to ₹ 45.

(c) To those sarkar grade and driver by ₹ 5.

(d) To all mechanics, skilled and semi-skilled by ₹ 5.

(e) To all durwans, peons and bearers by Re. 1.

2. Upgrading:

We cannot agree to this being a subject of bargaining and negotiation by the employees' association. Upgrading or special increments can be given solely at management's discretion and judgment of individual employee's performance, ability, conduct, etc., as and when judged proper.

3. Working hours:

The working hours of mechanics in the office machines repair workshops are at present 9-30 a.m. to 5-30 p.m. with half hour interval for tiffin and rest. No change is called for or can be agreed to in this respect.

As to clerical staff working at our office and shops at 8/1, Dalhousie Square at Norton Buildings, the present hours for several years past have been as under:

9-30 a.m. to 6-00 p.m. for some, and 10 a.m. to 6-30 p.m. for others,

The interval for rest and tiffin has been one hour. As intimated last, we agree to make the attendance of all clerical staff from 10 a.m. to 6 p.m. with no grace for late attendance, and with the condition that any clerk asked to work for another half hour in case of rush or urgent work shall do so. In case the employees agree to the rest hour being reduced to Half an hour, we are agreeable to withdraw this condition. Work cannot cease earlier than 6 p.m. as thereby business will suffer.

We would also stress here that as employees are so keen about reducing working hours, the punctuality of attendance has to be ensured with strict disciplinary measures.

4. Sick leave: We agree to allow sick leave for fourteen days in a year with half pay, accumulating for two years, i.e. , up to 28 days at a time, only in case of serious illness, to be granted at management's discretion against application by an employee supported by a

medical certificate from a registered medical practitioner approved by the company. Such application to be submitted within seven days of the initial leave application or absence.

5. Holidays: Sixteen of the gazetted holidays in a year.

Your co-operation in settling this matter will be very much appreciated.

14. Apparently the petitioners did not agree to the concessions proposed by the company and ultimately the matter was referred for adjudication by an industrial tribunal. During the long course of the attempted conciliation proceeding, the company never took up the attitude that the old agreement remained binding and remained unterminated and that the parties thereto were bound by the same and there was no scope for conciliation on matters covered by the agreement. By their conduct it must be held that the company waived the right to receive a formal notice of termination of the settlement, as contemplated under Section 19(2) of the Act. Further in the written statement filed on behalf of the company before the tribunal, the point, that the agreement being there and not terminated by any of the parties, there could not be any industrial dispute on the point covered by the agreement, was not taken.

15. In the facts and circumstances of this case, I hold that the company waived notice under Section 19(2) of the Act and both the parties to the dispute proceeded on the basis that the earlier agreement had been terminated. That being the position, Section 19(2) of the Act did not stand in the way of the tribunal to decide the dispute on the points of dearness allowance, sick leave and pay scale.

16. In the result it must be held that the tribunal failed to exercise a jurisdiction vested in it by law and that part of the tribunal's award concerning dearness allowance, scale of pay and sick leave must be quashed. The law gave to the tribunal the sole jurisdiction to decide the disputes on those points and by refusing to decide the disputes in the manner done, it clearly fell into an error of jurisdiction.

17. I, therefore, command the State Government to place the disputes on those points before the same tribunal and that tribunal must now proceed according to law, regard being had to the observations contained in this judgment. The other portions of the award need not be interfered with and must stand.

18. Let a writ of certiorari issue quashing the aforementioned portion of the award. Let a writ of mandamus also issue commanding the State Government to place the remaining disputes before the same tribunal.

19. There will be no order as to costs in this rule.

Petition partly allowed.