
(1962) 06 CAL CK 0017
In the Calcutta High Court

B.N. Elias and Co. (Private) Ltd.

APPELLANT

Vs

Third Industrial Tribunal and Others

RESPONDENT

Date of Decision : 08-06-1962

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 25F, 25P

Citation : (1962) 2 LLJ 436

Hon'ble Judges : Banerjee, J

Bench : Single Bench

Judgement

Banerjee, J.—The petitioner is a company incorporated under the Indian Companies Act and is the owner of a bone mill at Bansberia, in the district of Hooghly, known as the Empire Bone Mill.

2. As between the petitioner-company and its workmen there was an award of an industrial tribunal, presided over by Sri M.C. Banerjee, made as far back as 29 January 1949, under which there was a scheme framed for payment of compensation to workmen either on retirement or on death, or on resignation due to illness or old age, or on termination of service as a result of reduction of the establishment or otherwise to the following effect:

(a) On retirement after not less than 25 years" continuous service. Half a month"s basic pay for each completed year of service subject to a maximum of 15 months" basic Pay.

(b) On death of an employee while in service.--Half a month"s pay for each completed year of service, irrespective of the length of service but subject to the maximum of 15 months" basic pay to be paid to the employee"s heirs.

(c) On resignation or retirement at any time before the completion of 25 years" service, with the written consent of the employer, owing to illness, old age or any other sufficient cause.-Half a month"s basic pay for each year of completed service.

(d) On termination of service by the employer, either as the result of reduction of 118 establishment or in any other circumstances not justifying dismissal.--Half-month's basic pay for each completed year of service, irrespective of the length of service.

(e) No gratuity shall be payable when the employee is dismissed for misconduct,

(f) Gratuity is to be calculated on the basis of average substantive pay during the last 12 months of service.

3. It is not disputed that the aforesaid scheme was framed to meet the demand of the workmen for payment of compensation in lieu of provident fund, which fund the company did not have. The aforesaid scheme was again approved and continued by an award of another industrial tribunal, presided over by Sri A.T. Das Gupta, in another industrial dispute between the petitioner company and its workmen, made as far back as 19 April 1951. That award is admittedly still in force and operative between the parties.

4. Chapter V-A of the Industrial Disputes Act, 1947, was brought on the statute book by Industrial Disputes (Amendment) Act, 1953, and came into force with effect from 24 October 1953. Section 25F, in the aforesaid chapter, reads as follows:

No workman employed in an industry who has been in continuous service for not less than one year under an employer, shall be retrenched by the employer until

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice wages for the period of the notice:

Provided that no such notice shall be necessary, if the retrenchment is under an agreement which specifies a date for the termination of service;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to 15 days' average pay for every completed year of service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government.

5. Between 29 October 1956 and 19 January 1958, the petitioner-company retrenched a total number of 198 workmen. In the matter of compensation payable to the workmen on retrenchment, there arose an industrial dispute. The workmen claimed double benefits both under the scheme framed under the award and under the provisions of Section 25F of the Industrial Disputes Act. Petitioner-company paid to the workmen the compensation payable u/s 25F of the Act but was not willing to pay to them the other benefit under the scheme. The respondent State Government referred the dispute to the third industrial tribunal for adjudication on the following issue:

Whether the workmen who have been retrenched on 29 October 1956, 18

November 1957, 13 January 1958, 15 January 1958 and 19 January 1958, as indicated below, are entitled to get gratuity as per award of Sri A. Das Gupta published in the Calcutta Gazette on 19 April 1951, over and above the retrenchment compensation paid in accordance with the provisions of the Industrial Disputes Act, 1947. If so, what should be the amount of such gratuity in each case?

6. The tribunal came to the opinion that the workmen were entitled to both the benefits. Hereinbelow, I set out the relevant extract from the award:

In the present case the gratuity scheme was provided in the award in lieu of provident fund at the common consent of the parties to the reference, and the scheme in force in the present concern provides gratuity which is quite different in nature from the retrenchment compensation u/s 25F of the Act. Therefore, the decision relied on by the company does not apply to the present case in view of the different nature of the gratuity provided in the scheme in force. On the contrary, there is no legal bar to workmen's getting double benefit, one under a gratuity scheme and the other a retrenchment compensation as has been observed by the Supreme Court in a later decision, *Muller and Phipps (India) Ltd. Vs. K.C. Sud*, . The decision in *Brahmachari* case was considered by the Court in this case and found distinguishable on facts. It was further observed in this case that in absence of any specific provision made for payment of gratuity in case of retrenchment, as such it should be held that payment under gratuity scheme was in addition-to the retrenchment compensation in accordance with the provisions of Section 25F of the Industrial Disputes Act.

Therefore, regard being had to the terms of the gratuity scheme in force in the company the workmen's claim for gratuity cannot be resisted. They are entitled to gratuity in accordance with the scheme in force in addition to the retrenchment compensation under the provisions of Section 25F of the Act already paid to them. All the workmen who were retrenched on 29 October 1956, 18 November 1956, 13 January 1958, 15 January 1958 and 19 January 1958 are, therefore, entitled to get gratuity in accordance with the gratuity scheme provided in the award, dated 29 January 1949, of Sri M.C. Banerjee and reintroduced by the award of Sri A. Das Gupta published in the Calcutta Gazette on 19 April 1951.

7. The propriety of the award is being disputed in this rule by the petitioner-company, which has asked for a writ in the nature of certiorari for quashing the award.

8. Mr. Debi De, learned advocate for the petitioner, contended that the scheme under the award was introduced, inter alia, to give some compensation to the workmen in the event of retrenchment at a time when Section 25F of the Industrial Disputes Act had not been enacted and that the workmen were not entitled to get compensation both under the scheme and u/s 25F of the Act. If Mr. De is right in his contention that the scheme was framed to give to the

workmen the same benefit as was later on conferred on them u/s 25F of the Act, then the objection taken by Mr. De to the award deserves serious consideration.

9. On this point there are now three decisions of the Supreme Court to which I shall presently refer. In the first place, there is the case of *Indian Hume Pipe Co. Ltd. v. the workmen* 1959 II J 830 in which Gajandragadkar, J., observed as follows on pp. 333-836:

(a) It is true that a retrenched workman would, by virtue of his retrenchment, be entitled to claim retrenchment compensation in addition to gratuity, because industrial adjudication has generally taken the view that the payment of retrenchment compensation cannot affect the workmen's claim for gratuity. In fact the whole object of granting retrenchment compensation is to enable the workmen to keep his gratuity safe and unused so that it may be available to him after the retirement. Thus the object of granting retrenchment compensation to the employee is very different from the object which gratuity is intended to serve. That is why on principle the two schemes are not at all irreconcilable nor even inconsistent; they really complement each other; and so, on considerations of social justice there is no reason why both the claims should not be treated as legitimate. The fact that they appear to constitute a double benefit does not affect their validity. That is the view which industrial tribunals have generally taken in a large number of reported decisions on this point.

* * * (b) Before we part with this appeal, we ought to refer to another aspect of the matter which our present decision does not consider or decide. It is likely that gratuity schemes framed by consent or by awards may provide for payment of compensation to retrenched workmen either in lieu of or in addition to gratuity; in such cases the question as to whether the retrenched workmen can claim the benefit of such a scheme in addition to the retrenchment compensation u/s 25F would depend on the construction of the material terms of the relevant scheme considered in the light of the provisions of Section 25F of the Act. In the present appeal we are not called upon to consider such a question. Therefore, our decision has and can have no reference to cases which would fall to be decided u/s 25F of the Act.

10. Then again there is the case of *The Brahmachari Research Institute, Calcutta-4 Vs. Their Workmen*, in which Wanchoo, J., observed as follows:

The general question has been considered by this Court in *The Indian Hume Pipe Co. Ltd. Vs. The Workmen* and another, judgment in which is being delivered today. As the penultimate paragraph in that judgment shows, special considerations may arise on the terms of agreements or awards in particular cases and it is this aspect which falls to be considered in the present appeal.

The sole question, therefore, for determination in this appeal is whether the retrenched workmen are entitled under the award to gratuity provided therein in addition to retrenchment benefit u/s 25F of the Act. We may, therefore, reproduce here the relevant part of the award, which is in these terms.

* * *

11. It will be seen that the award is a composite scheme providing for what is termed gratuity therein under three conditions, namely:

- (i) where there is retrenchment,
- (ii) where there is termination of service for any reason other than misconduct, and
- (iii) where there is resignation with the consent of the management.

Though the word gratuity has been used to cover all these three cases, it is clear that cases of retrenchment as such are also covered by the award and payment to workmen retrenched has been called "gratuity". The name given to the payment is, however, not material and it is the nature of the payment that has to be looked into. Now, under this award it is obvious that this payment on retrenchment though called gratuity is really nothing more nor less than compensation on account of retrenchment. Further it is obvious from the terms of the award that a retrenched workman would claim gratuity under the "award" only on account of retrenchment and could not claim it under the other two conditions therein. In other words, in a fair and reasonable construction of the award, what the retrenched workman got is only compensation for retrenchment and not any amount by way of gratuity properly so called.

12. This brings us to the provisions of the Act with respect to retrenchment. "Retrenchment is defined u/s 2(oo) and means

the termination by the employer of the service of the workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action but does not include

- (a) voluntary retirement of the workman; or
- (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
- (c) termination of the service of a workman on the ground of continued III-health.

13. If this definition is compared with the provisions of the award, it will be found that the award provides payment not only for retrenchment as such but also for other termination of service which is specifically excepted from the definition of "retrenchment." Clauses (a) and (b) of Section 2(oo) are provided in the award by the words "cases of resignation with the consent of the management." Similarly, Clause (c) of Section 2(oo) is provided for by the words "termination of service by the company for any reason other than misconduct." It is, therefore, obvious that the award provides not only for payment on retrenchment but also for payment on termination of service for any reason other than misconduct and

on retrenchment. It is thus a composite scheme; and merely because the payment is called gratuity even where it is payable on account of retrenchment, it cannot be anything other than a compensation so far as the part of the award relating to retrenchment is concerned.

* * * Whether it is called "gratuity" or "compensation," it is in the substance a payment to the workman on account of retrenchment; and if a scheme like the present specifically provides payment for retrenchment as defined in Section 2(oo), we see no justification for compelling that payment twice over, once u/s 25F and again under the scheme in force in the concern. The matter would be different if the scheme in force in any concern or any award provides gratuity which is different in nature from the retrenchment compensation u/s 25F.

14. Lastly, there is the case of Mutter and Phipps (India) (Private), Ltd. v. K.C. Sud 1960 II L.L.J. 2511 in which Das Gupta, J., observed as follows:

On the very day this pronouncement was made the Court also delivered judgment in The Brahmachari Research Institute, Calcutta-4 Vs. Their Workmen, in which the question as indicated above fell to be considered. In Brahmachari case the Court after mentioning¹ that the general question as to double benefits of retrenchment compensation and gratuity being available to workmen had already been considered in the The Brahmachari Research Institute, Calcutta-4 Vs. Their Workmen, proceeded to examine the award that has been made in a dispute between the institute and its workmen to ascertain whether gratuity in addition to retrenchment compensation was provided thereby. The Court pointed out that in that award the word gratuity had been used to cover all three cases, viz,

- (i) retrenchment,
- (ii) termination of service by any reason other than misconduct, and
- (iii) resignation with the consent of the management;

what deserved special notice was that cases of retrenchment as such were specifically covered by the award. It was of opinion that such payment to workmen for retrenchment as such did not lose its character of retrenchment compensation by reason of the mere fact that it was described as gratuity. It was mainly on the basis of this fact that the award had provided gratuity for retrenchment as such in addition to gratuity for other modes of termination of service that the Court decided in The Brahmachari Research Institute, Calcutta-4 Vs. Their Workmen, that the gratuity there on retrenchment was nothing more or less than compensation on account of retrenchment as provided u/s 25P of the Act and decided that the workmen were entitled to only one or the other, whichever is more advantageous to them.

If we examine the award in the case before us in the light of the two decisions of the Court mentioned above, the first thing that strikes us is that this award did not make any provision for gratuity for retrenchment as such. It is important to

notice that the workmen themselves in their statement of claim had urged for a distinct provision for retrenchment in addition to other modes of termination of service. The tribunal however made no special provision for retrenchment but provided in its scheme of gratuity for three classes of cases, namely,

- (i) on the death of an employee or on his becoming physically or mentally incapable of further service,
- (ii) on voluntary retirement or resignation and
- (iii) on termination of service by the company.

Retrenchment, It is true, will fall within the termination of the service. That, however, as is clear from the above cases, cannot by itself justify a conclusion that the gratuity that could be of aimed under such a scheme in case of retrenchment was in lieu of retrenchment compensation. If the intention was that in cases of retrenchment the gratuity will be in lieu of retrenchment compensation provided u/s 25F, the obvious thing would be to make separate provisions for gratuity for retrenchment as such and gratuity for other modes of termination of service. That was the method followed in the award that fell for consideration in *The Brahmachari Research Institute, Calcutta-4 Vs. Their Workmen*, . That method has however not been followed in the award that we have to consider here. In this case there is no specific reference in the award to retrenchment as such. The reasonable conclusion from the scheme as drawn up is that the gratuity that could be claimed under this award by retrenched workmen because of the fact that retrenchment is also one kind of termination of service within the meaning of the award was intended to be in addition to the retrenchment compensation and not in lieu thereof.

The decision in *The Brahmachari Research Institute, Calcutta-4 Vs. Their Workmen*, on the special facts of the award therein is therefore of no assistance to the appellant.

15. In the facts and circumstance a of the particular case the tribunal was right in applying the decisions in *Muller and Phipps (India) Ltd. Vs. K.C. Sud*, (vide supra) and was also right in allowing the claim of the workmen to get benefits both under the scheme and u/s 25F of the Industrial Disputes Act. The scheme, as it appears from the findings of the tribunal, was introduced to give to the workmen some sort of benefit in lieu of provident fund, on retirement, resignation due to old age or illness or on retrenchment. Compensation u/s 25F has nothing to do with provident fund and the payment under the scheme, which is in lieu of provident fund, does not serve the purpose of statutory compensation u/s 25F of the Industrial Disputes Act.

16. For the reasons aforesaid I hold that the tribunal was right in its conclusion and I should not interfere with the award. I, therefore, discharge the rule.

17. Since nobody has appeared to oppose the rule, I make no order as to costs.