

(1964) 12 MP CK 0007
In the Madhya Pradesh High Court

Central India Electric Supply Company Workers' Union Ltd.	APPELLANT
Vs	
Central India Electric Supply Company Ltd.	RESPONDENT

Date of Decision : 21-12-1964

Acts Referred:

Central Provinces and Berar Industrial Disputes Settlement Act, 1947 — Section 38A
Madhya Pradesh Industrial Relations Act, 1960 — Section 51

Citation : (1967) ILR (MP) 191 : (1965) JLJ 384 : (1966) 2 LLJ 212 : (1965) 10 MPLJ 350 : (1965) MPLJ 350

Hon'ble Judges : P.V. Dixit, C.J;K.L. Pandey, J

Bench : Division Bench

Judgement

K.L. Pandey, J.

This petition under Articles 226 and 227 of the Constitution is directed against an award dated 27 April 1964 whereby the industrial court, Madhya Pradesh, rejected the demands of Central India Electric Supply Company Workers' Union (hereinafter called the union) and directed that Central India Electric Supply Company, Ltd. (hereinafter called the company), would be entitled to recover the amounts paid as interim relief to its employees from the retrenchment compensation payable to them.

The facts giving rise to this petition are not in contest and may be shortly stated. In the year 1958, there was a dispute between the workers of the union, who are employed in the power-house at Katni, and the company, who was their employer, about certain demands made by the workers. In due course, a reference was made u/s 38A of the Central Provinces and Berar Industrial Disputes Settlement Act, 1947. The award made on that reference was announced on 20 March 1962 and it rejected the demands except in regard to dearness allowance in part and free allowance of electricity. The workers applied for a review of this award, but their application was dismissed on 2 August 1962. Thereupon, on 17 November 1962, the union gave a notice intimating its intention to terminate the award in so far as the demands of the workers were

rejected. That was followed by a notice of change dated 21 January 1963. Since no agreement was reached and the conciliation too failed, the State Government made on 14 March 1963 a fresh reference u/s 51 of the Madhya Pradesh Industrial Relations Act, 1960, and, on 25 May 1963, added to the six items covered by that reference one more item, namely, interim relief. By an order, dated 19 July 1963, the industrial court directed that interim relief be given by paying 10 per cent of the basic wages, subject to a minimum of Rs. 5 per month, from 1 April 1963. Ultimately by the award, which is challenged in these proceedings, all the demands of the workers were rejected.

In the earlier reference, three of the demands related to revision of dearness allowance, grafting of grades and increments and introduction of a gratuity scheme. In the award made on that reference, it was found that the rates of dearness allowance paid to the workers, except in regard to those drawing wages between Rs. 63 and Rs. 85 per month, were higher than those at which the allowance was given to the employees of Madhya Pradesh Electricity Board. It was in this situation that the dearness allowance payable to the workers drawing wages between Rs. 63 and Rs. 85 per month was equated with that paid by the Madhya Pradesh Electricity Board to its similar, low-paid employees. But the demands for grant of grades and increments and introduction of a gratuity scheme were expressly rejected. In the new references u/s 51 of the Madhya Pradesh Industrial Relations Act, 1960, only these three demands were pressed. When this reference was pending, final steps had been taken for terminating the licence of the company and for the undertaking being taken over by the Madhya Pradesh Electricity Board from 4 May 1964. In rejecting the demands, the industrial court held that

- (i) the decision on the earlier reference operates as res judicata, and
- (ii) there is, even otherwise, no case on merits for accepting those demands.

Learned Counsel for the petitioner questioned the application of the rule of res judicata to industrial adjudication and strongly relied for support on the following observations of the Supreme Court in *Workmen of Balmer Lawrie and Co. Vs. Balmer Lawrie and Co.*, at 384:

When a wage-structure is framed, all relevant factors are taken into account and normally it should remain in operation for a fairly long period, but It would be unreasonable to introduce considerations of res judicata as such, because for various reasons which constitute the special characteristics of industrial adjudication the said technical considerations would be inadmissible. As the Labour Appellate Tribunal itself has observed, the principle of gradual advance towards the living wage, which industrial adjudication can never ignore, itself constitutes such a special feature of industrial adjudication that it renders the application of the technical rule of res judicata singularly inappropriate. If the paying capacity of the employer increases or the cost of living shows an upward trend, or there are other anomalies, mistakes or errors in the award fixing wage-

structure, or there has been a rise in the wage-structure. In comparable industries in the region, industrial employees would be justified in making a claim for the re-examination of the wage-structure and if such a claim is referred for Industrial adjudication, the adjudicator would not normally be justified in rejecting it solely on the ground that enough time has not passed after the making of the award, or that material change in relevant circumstances had not been proved. It is, of course, not possible to lay down any hard and fast rule in the matter. The question as to revision must be examined on the merits in each individual case that is brought before an adjudicator for his adjudication.

Dealing with the question of revision of wage-structure their lordships have indicated in these observations in what circumstances a claim for re-examination of the wage-structure would be justified and stated that the technical rule of *res judicata* would be inappropriate to industrial adjudication. Their lordships further said that it was, of course, not possible to lay down any hard and fast rule in the matter. The Supreme Court has repeatedly held that the principle of *res judicata*, as distinguished from the technical rule of *res judicata*, applies to decisions of industrial tribunals. So, in *Burn and Co., Calcutta Vs. Their Employees*, at 230, Venkatarama Ayyar, J., laid down the law as follows:

And there are good reasons why this principle should be applicable to decisions of Industrial tribunals also. Legislation regulating the relation between capital and labour has two objects in view. It seeks to ensure to the workmen, who have not the capacity to treat with capital on equal terms, fair returns for their labour. It also seeks to prevent disputes between employer and employees, so that production might be adversely affected and the larger interests of the society might not suffer. Now, if we are to hold that an adjudication loses its force when it is repudiated u/s 19 (6) and that the whole controversy is at large, then the result would be that far from reconciling themselves to the award and settling down to work it, either hearty will treat it as a mere stage in the prosecution of a prolonged struggle, and far from bringing industrial peace, the awards would turn out to be but truces giving the parties breathing time before resuming hostile action with renewed vigour. On the other hand, if we are to regard them as intended to have long-term operation and at the same time hold that they are liable to be modified by change in the circumstances on which they were based, both the purposes of the legislature would be served.

This was followed in India *General Navigation and Railway Co. Ltd., Calcutta and Another Vs. Their Workmen and Another*, and *Dalmia Dadri Cement v. Avtar Narain Gujral* 1962 I L.L.J. 261, In the last-mentioned case, it was authoritatively laid down that the principle would apply only when there was an adjudication by an Industrial tribunal on the merits of the dispute in question. In the instant case, the industrial court did not apply any technical rule of *res judicata* to the demands made but it came to the conclusion that, since there was no change in the material circumstances, there was no case for reopening the dispute settled upon merits by the earlier award. Even apart from this, the industrial

court examined the justification for the three demands on merits and rejected them. As we would show in the following paragraphs, there is no case for interference in these proceedings with the conclusions reached by the industrial court.

The industrial court took the view that, since the respondents' undertaking was being taken over by the Madhya Pradesh Electricity Board shortly afterwards, that is to say, on 4 May 1964, there was no case for the introducing of a gratuity scheme. In support of that view, the Industrial court referred to the observations of the Supreme Court in *The Akola Electric Supply Co. Vs. J.N. Jarare and Others*, to the effect that the framing of a gratuity scheme is wholly unjustified where an industry is on the verge of closure. For the same reason, the demand for revision of pay-scale and introduction of incremental scales of pay was also turned down because, as indicated by the Supreme Court in *Burn and Co., Calcutta Vs. Their Employees*, and *Express Newspapers (Private) Ltd. and Another Vs. The Union of India (UOI) and Others*, wage-scales as settled were intended to be long-term schemes not to be interfered with without justification. Since the learned Counsel for the petitioner did not seriously challenge the view taken by the industrial court in regard to these two demands, we do not consider it necessary further to dwell on them. In regard to the demand for increase in the dearness allowance, the industrial court rejected that demand for the following reasons:

So, according to the previous Katni award, a majority of employees of Katni concern were getting more dearness allowance than that which was paid to the employees by the Madhya Pradesh Electricity Board while in respect of a small number of employees whose wages ranged between Ra. 63 and Rs. 85, the dearness allowance was equated with that of the Madhya Pradesh Electricity Board. There is no evidence on record to show that after the passing of the previous Katni award the Madhya Pradesh Electricity Board increased the dearness allowance of its employees or that during the short time-lag the cost of living materially increased. That being the position, obviously no case exists to revise the existing scales of dearness allowance.

In our opinion, the conclusion that, during the short time when increase in the dearness allowance was demanded, there was no material increase in the cost of living, which must be accepted in these proceedings, was sufficient justification for the industrial court to decline to revise that allowance.

The result is that this petition fails and is dismissed. The petitioner shall bear its own costs and pay out of the security amount those incurred by the respondent. The remaining amount of security shall be refunded. Hearing fee Rs. 100.