

(1965) 09 BOM CK 0019

In the Bombay High Court

Case No : Special Civil Application No. 1192 of 1964

Ghatge and Patil Company Employees" Union

APPELLANT

Vs

Power (K.R.) and Another

RESPONDENT

Date of Decision : 28-09-1965

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 17A, 19, 19(3)

Citation : (1965) 09 BOM CK 0019

Hon'ble Judges : H.K. Chainani, C.J;S.P. Kotval, J

Bench : Division Bench

Judgement

Chainani, C.J.—The petitioners are a union of workers employed by respondent 2, hereinafter referred to as the respondents. A dispute between the respondents and their workmen was referred to the industrial tribunal, respondent 1, under S. 10 of the Industrial Disputes Act. At the hearing the respondents filed an agreement between them and their workmen. Two copies of the agreement were produced, one dated 23rd July, 1963 which purported to have been signed by 90 workmen and the other dated 14 August, 1963 which purported to have been signed by 14 other workmen. At that time, the number of persons employed by the respondents was 112 permanent workmen and 12 temporary employees, i.e. 124 employees in all. The agreement had been signed by 104 employees. The respondents prayed that as the great majority of the workmen were parties to the agreement, an award should be made accordingly. This was strongly opposed by the petitioners. They contended that the agreement had been arrived at with the employees individually and not with the union and that the settlement was opposed to the principle of collective bargaining. They also contended that the employees had signed the agreement under misrepresentation, coercion and threat of removal from service. They also raised objections in regard to the terms of the agreement. The tribunal allowed both the parties to lead evidence and after considering the evidence came to the conclusion that the allegation that the signature of the employees had been obtained by misrepresentation, threat or under coercion was not true and that the agreement had been signed by them

voluntarily. The tribunal also considered the objections raised by the union in regard to the different matters covered by the agreement. After considering these objections the tribunal made its award. The award is in terms of the agreement except in two respects, in regard to which the tribunal came to the conclusion that the agreement should be modified. In regard to privilege leave the agreement provided that it shall be granted in accordance with the provisions of the Factories Act. Under that Act privilege leave allowed per year is fifteen days. The Shops and Establishments Act applies to some of the employees and under that Act they are entitled to privilege leave for about 21 days. The tribunal, therefore, directed that every employee should be granted privilege leave in accordance with the provisions of the Shops and Establishments Act. In regard to bonus, the agreement provided for payment of bonus equal to one-thirtieth of the total earnings for the years 1961-62 up to 1965-66. The tribunal has, however, made an award in regard to bonus only for the year ending 31 July, 1962. The award made by the tribunal is being challenged in the present application.

2. Sri Sowani, who appears on behalf of the petitioners, has urged that the award is illegal as it is based on the agreement which had been arrived at with the employees individually, contrary to the principle of collective bargaining. We do not think that we can accept this argument. The award is not a consent award. It is an award made by the tribunal itself after considering the terms of the agreement between respondent 2 and the great majority of their workmen in the light of the objections raised by the union. The various clauses of the agreement and the objections raised by the union have been separately considered. The tribunal came to the conclusion that the agreement gave substantial benefits to the workmen and that it was fair. The tribunal has pointed out that as a result of the agreement the wage bill alone would increase by Rs. 48,000 per year, i.e. by about 35 per cent. Having regard to this fact and to the other benefits conferred by the agreement on the workmen, the tribunal was of the opinion that it was proper and fair to make the award in accordance with the terms of the agreement and to make it applicable to all the employees concerned. As, I have pointed out above, the tribunal has modified the agreement in regard to two matters, privilege leave and bonus. As, therefore, the award has been made by the tribunal itself after applying its mind to the matter and after considering the contentions, which were raised before it, the award cannot be set aside, even if we were to accept Sri Sowani's argument that the agreement between the respondent and the 104 workmen had not taken place in the manner required by law.

3. The award provides for consolidated scales of pay for different classes of workmen. For unskilled workmen the minimum starting pay is Rs. 50 while for semi-skilled class III employees the minimum starting pay is Rs. 55. It has been urged by Sri Sowani that the minimum starting scales are very low and that they are lower than the minimum wage which has been prescribed in respect of certain other establishments under the Minimum Wages Act. Sri Sowani has,

however, admitted that no minimum wage has been prescribed for the establishment like that of the respondents. Moreover, we find that in the objections which were raised by the petitioners to the agreement, no objection was raised on the ground that the minimum wage prescribed was very low. The objection was to consolidated wage being fixed as provided in the agreement. This objection has been dealt with by the tribunal in Para. 23 of the award, where the tribunal has pointed out that even the demand which had been made and which had been referred to the tribunal for adjudication was for a fixed amount of dearness allowance. As, therefore, no objection was raised before the industrial tribunal in regard to the minimum starting pay in the prescribed scales of pay, we cannot interfere with the award of the tribunal on this ground.

4. Sri Sowani had also contended that as the agreement had been arrived at only with the permanent employees, the tribunal should not have made it applicable to temporary employees. The number of temporary employees was, however, very small, being only about 12, as compared to 112 permanent employees. The tribunal also, as I have pointed out, came to the conclusion that the agreement was fair and reasonable. The award made by it must also necessarily apply to all the employees both permanent and temporary. As the tribunal was of the opinion that the terms of the agreement were fair and reasonable, the tribunal cannot be said to have erred in making an award in terms of the agreement and in making the award applicable to temporary employees also.

5. The other objection, which has been raised by Sri Sowani, is in regard to the period for which the award shall remain in force. The tribunal has directed that the award shall remain in force up to 31 July, 1967. This direction was given as the agreement provided that it shall remain in force up to 31st July, 1967. Sri Sowani has referred us to S. 19(3) of the Industrial Disputes Act, which provides that

"an award shall, subject to the provisions of this section, remain in operation for the period of one year from the date on which the award becomes enforceable under S. 17A,"

6. and has contended that the tribunal had no jurisdiction to make the award for a period longer than one year. This argument of Sri Sowani seems to be correct. The proviso to S. 19(3) empowers Government to extend the period of operation of the award. Unless the period is so extended, the award can only remain in force for a period of one year. Sri Phadke has urged that even assuming that Sri Sowani is right on this point, we should not interfere as justice of the case does not call for our interference. He has relied on the decision, Balvantrai Chimanlal Trivedi, Manager, Raipur Mafg. Co. Ltd., Ahmedabad Vs. M.N. Nagrashna and Others, in which the Supreme Court, observed that the Court would not go into the question of jurisdiction of the lower tribunal in an appeal under Art. 136 of the Constitution unless it was satisfied that the justice" of any given case required it. Sri Phadke had urged that as the great majority of workmen - about 90 per cent - were parties to the agreement which provided for the agreement

remaining in force for a period of three years justice does not require that we should interfere with this term of the award. There is some force in this argument of Sri Phadke, but having regard to Sub-section (3) of S. 19 of the Act, it seems to us that the tribunal could not have directed that the award should remain in operation for a period longer than one year. It is not necessary for us to decide in this application whether the parties cannot arrive at an agreement that a settlement between them shall remain in force for a period longer than one year. That question does not arise in present case, because, as I have observed, the award must be regarded as an award made by the tribunal itself after considering the merits of the case and it is not a consent award. Such an award can only remain in operation for a period of one year.

7. In the result therefore, we direct that Clause IX of the award, which directs that it shall remain in force up to 31 July, 1967, shall be dated from the award. Subject to this modification, the award will stand. No order as to costs.