

(2015) 08 DEL CK 0341

In the Delhi High Court

Case No : LPA 49/2012

Indian Navigation Co.

APPELLANT

Vs

Works Thr. Engineering Workers Lal Jhanda Union

RESPONDENT

Date of Decision : 07-08-2015

Acts Referred:

Citation : (2015) 8 AD 269 : (2015) 147 FLR 376

Hon'ble Judges : Pradeep Nandrajog and Mukta Gupta, JJ.

Bench : Division Bench

Advocate : Sanjoy Ghose, Advocate, for the Appellant; H.K. Chaturvedi, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Pradeep Nandrajog, J.—Two writ petitions No. 15652/2004 and 15669/2004 filed by the appellant have been dismissed by the learned Single Judge vide a common order dated September 14, 2011. The appellant has filed the instant appeal challenging the said order but only in relation to W.P.(C) No. 15652/2004, and thus we note the relevant facts concerning said writ petition. Challenge by the appellant in W.P.(C) No. 15652/2004 was to an award dated November 25, 2003 under which the undernoted reference made by the appropriate Government to the learned Industrial Tribunal was decided:-

"Whether the workmen are entitled to annual increment, summer and winter uniform, and house rent allowance and if so, what directions are necessary in this respect."

2. In the statement of claim filed by the union of the Workmen it was pleaded that the appellant had three category of workmen working under it: (i) Unskilled workmen called helpers; (ii) Semi-skilled workmen called Assistant Machine Man; and (iii) Skilled Workmen called Machine Man. It was pleaded that the management used to give an annual increment of Rs. 30/- per month, Rs. 35/- per month and between Rs. 40- Rs. 50/- per month to the unskilled, semi-skilled

and skilled workmen respectively. It was pleaded that said increment was being since the year 1978. It was pleaded that the Union demanded the increment to be enhanced to Rs. 50/-, Rs. 65/- and Rs. 75/- per month each year. The grievance was that the appellant stopped paying the annual increment since June, 1994. Summer and winter uniform was also prayed for to be given by the management on the plea that the nature of job performed by the workmen was of a kind where clothes get spoiled. Without pleading that in the past house rent allowance used to be paid, claim was made for house rent allowance on the plea that the management had been assuring that house rent allowance would be paid.

3. In the reply to the statement of claim the appellant did not dispute that in the past it had been giving an annual increment to the three category of workmen at the rate pleaded in the statement of claim but pleaded justification for not giving the increment in the year 1994 because in the year 1994 minimum wages were increased very steeply by 35%. It was pleaded that the management was paying wages at the rate notified under the Minimum Wages Act. It was pleaded that due to steep rise in the minimum wages notified under the Minimum Wages Act by 35% the management suffered lasses. It was pleaded that the paying capacity of the appellant did not warrant the claim of the workmen to be accepted.

4. Accepting the claim of the workmen of being entitled to annual increment, the reasoning of the learned Labour Court in the award is as under:-

"12. In the present case, as discussed above, the management had been giving the increment to Rs. 30/- to Rs. 50/- to the categories of employees; Rs. 30/- to unskilled workers, Rs. 45/- to semi skilled workers and Rs. 50/- to skilled workers from the year of 1978 to 1994. The last increment was granted in the year of 1993 and the workers raised their charter of demands claiming the enhancement of annual increment to Rs. 50/- to unskilled workers, Rs. 65/- to semi skilled workers and Rs. 75/- to skilled workers and the management instead of enhancing the rate of increment rather stopped giving the increments. The management has not given any reasoning for stopping the increments except that there was revision of minimum wages in the year of 1994 and in which there was about 35% enhancement in the wages, due to which the management suffered heavy financial losses. It is established on the record that the management had paid the bonus @ 15% where the rate under the statute was of 8.33%. Even otherwise I am not agreeable with the argument advanced by the management that the revising of minimum pay could be taken to the disadvantage to the workers by stopping their annual increments. The second limb of argument, advanced by management that it is the sweet will of the management to grant the increment to the individual on the basis of job performance, punctuality, discipline and loyalty towards work and it is not to be granted to all the workers. In other words, the non-grant of increment is rule and granting of increment is exception, I am not agreeable with" the argument

advanced by management I am of the consider opinion that the grant of the increment is rule and non grant is exception for which the cause could be of non-performance of job, unpunctuality, indiscipline and non-loyalty to the work. It is established in the present case that the annual increments were being granted since 1978 to 1994 and it was stopped in June 1994 as the workmen asked to enhance the rate of Increment. It is admitted case of the management that there was enhancement in the minimum wages which shows that the Price Index increased sharply due to which the minimum pay had to be revised by the government. Under the circumstances the workmen were entitled for enhancement of the rate of annual increment whereas management instead of enhancing, rather stopped the grant of annual increments already being given to them from 1978 till 1994."

5. Accepting the plea of the workmen that the nature of the work performed by them soiled and spoiled their clothes it was directed that the management would have to provide two uniforms, one for winter and the other for summer along with a pair of shoes annually. House rent allowance claimed was denied under the award.

6. The Union accepted the award and the management challenged the same.

7. The learned Single Judge has dismissed the writ petition filed by the appellant by simply observing that the balance sheet of the appellant for the year 2008-09 evinced profit.

8. While issuing notice in the appeal, the Division Bench noted as per the order dated January 23, 2012 as under:-

"The workers of the appellant/Management had raised the Industrial dispute demanding increments, uniforms etc. It was referred to the Industrial Tribunal which passed the award dated 25.11.2003 granting annual increments of Rs. 50/- to unskilled workers, Rs. 65/- to semi-skilled workers and Rs. 75/- to skilled workers with effect from 1994. In addition to this, one winter and one summer uniform as well as one pair of shoes were directed to be provided to the workers. Challenging the award, the appellant had filed the writ petitions which have been dismissed by the learned Single Judge vide impugned order dated 14.09.2011.

2. We may also place on record that the appellant/Management was paying increments at the rate of Rs. 30/-, Rs. 45/- and Rs. 50/- to unskilled, semi-skilled and skilled categories of workers respectively. The case setup by the appellant challenging the demands of the workers was that there was substantial increase in minimum wages, almost by 5%, and since minimum wages had to be necessarily paid, the appellant was not able to bear this financial burden and had started running into losses. To put it otherwise, the appellant had raised the contention that it had no means or capacity to pay the increment amount

3. We find from the award passed by the Tribunal that this aspect has not been duly gone into by the Tribunal. The Tribunal has simply taken into consideration

the facts that the appellant was paying the increments earlier and it could not stop the same merely because minimum wages had increased. Prima facie, it appears that without giving any reasons, the rate of increments was increased. The learned Single Judge on the other hand has gone by the fact that the workforce of the appellant which was more than 200 earlier is reduced to only 19 and the balance sheet for the year 2008-09 shows profits and therefore it may not be difficult for the appellant to bear the burden of increments etc. for 19 workers.

4. The contention of the learned senior counsel for the appellant is that the balance sheet of one year in which year the appellant has earned profits could not be the yardstick for determining the issue as the burden would be recurring every year. The contention is that otherwise there were losses in previous years and even for the year 2008-09 if the increments are given it will wipe but the entire profit."

9. Now, it is not the case of the workmen that the annual increments being paid to them were pursuant to any settlement. The claim of the workmen was on the past practice followed by the appellant.

10. In the past the appellant was not only paying wages to its workmen more than the minimum wages notified under the Minimum Wages Act but was also giving annual increments since the year 1978, but stopped the annual increment in June, 1994 since according to the appellant there was a very steep increase in the minimum wages notified under the Minimum Wages Act. As per the appellant the impact of the steep increase in minimum wages was its finances going haywire.

11. It is not the case of the workmen that they are being paid wages less than the one notified under the Minimum Wages Act.

12. The concept of "adjudication" of an industrial dispute by an Industrial Tribunal was first explained by the Federal Court in the decision reported as 1949 FCR 321 *Western India Automobiles Association v. Industrial Tribunal, Bombay & Ors.* in the following terms:-

"Adjudication does not in our opinion mean adjudication according to the strict law of master and servant. The award of the tribunal may contain provisions for" settlement of a dispute which no court could order if it was bound by ordinary law, but the tribunal is not fettered in any way by these limitations. In Volume I of "Labour Disputes and Collective Bargaining" by Ludwig Teller, it is said at page 536 that industrial arbitration may involve the extension of an existing agreement or making of a new one, or in general creation of a new obligation or modification of old ones, while commercial arbitration generally concerns itself with interpretation of existing obligations and disputes relating to existing agreements. In our opinion, it is a true statement about the functions of an industrial tribunal in labour disputes."

13. In the decision reported as *The Bharat Bank Ltd., Delhi Vs. Employees of the Bharat Bank Ltd., Delhi and The Bharat Bank Employees' Union, Delhi*, the Supreme Court observed as under:-

"We would not examine the process by which an Industrial Tribunal comes to its decisions and I have no hesitation in holding that the process employed is not judicial process at all. In settling the disputes between the employers and the workmen, the function of the Tribunal is not confined to administration of justice in accordance with law. It can confer rights and privileges on either party which it considers reasonable and proper," though they may not be within the terms of any existing agreement. It has not merely to interpret or give effect to the contractual rights, and obligations of the parties. It can create new rights and obligations between them which it considers essential for keeping industrial peace. An industrial dispute as has been said on many occasions is nothing but a trial of strength between the employers on the one hand and the workmen's Organization on the other and the Industrial Tribunal has got to arrive at some equitable arrangement for averting strikes and lock-outs which impede production of goods and the industrial development of the country. The Tribunal is not bound by the rigid rules of law. The process it employees is rather an extended form of the process of collective bargaining and is more akin to administrative" than to judicial function."

(Emphasis Supplied)

14. In the decision reported as *The New Maneck Chowk Spinning and Weaving Co. Ltd., Ahmedabad and Others Vs. The Textile Labour Association, Ahmedabad*, the Supreme Court summarized the law relating to industrial adjudication in the following terms:-

There is no doubt therefore that it is open to an industrial court in an appropriate case to impose new obligations on the parties before it or modify contracts in the interests of industrial peace or give awards which may have the effect of extending existing agreement or making a new one".

(Emphasis Supplied)

15. It was the duty of the Tribunal to have, on the principle of industry-cum-region, determined the wages and for which it ought to have taken guidance from the decision reported as *Unichem Laboratories Ltd. Vs. The Workmen*, wherein it was held:-

"From the decisions, referred above, it follows that two principal factors-which must weigh while fixing or revising wage scales and grades are: (1) How the wages prevailing in the establishment in question compare with those given to the workmen of similar grade and scale by similar establishments in the same industry or in their absence in similar establishments in other industries in the region; and (2) What wage-scales the establishment in question can pay without undue strain, on its financial resources. The same principles substantially apply

when fixing or revising the dearness allowance."

16. Concededly the learned Industrial Tribunal has not decided the real issue which it had to decide i.e. whether the appellant had means or capacity to pay the increment amount and what was the current prevailing wages in establishments of the like kind.

17. The error committed by the learned Single Judge is very pithily noted by the Division Bench of this Court in paragraph 3 and paragraph 4 of the order dated January 23, 2012 when notice was issued in the appeal and we concur because learned counsel for the respondent had nothing to argue to decimate said prima-facie opinion recorded by the Division Bench while issuing notice in the appeal.

18. Under the circumstances the only-course available is to remand the matter to the learned Industrial Tribunal for adjudication afresh.

19. The appeal is allowed. Impugned order dated September 14, 2011 dismissing W.P.(C) No. 15652/2004 is set aside and W.P.(C) No. 15652/2004 is disposed of setting aside the award dated November 25, 2003 and simultaneously restoring ID No. 37/12994 for adjudication afresh by Industrial Tribunal-II. The learned presiding officer of the Industrial Tribunal shall answer the reference made to the Tribunal keeping in view the present decision and shall decide the reference afresh within one year of receipt of the present decision.

20. The Registry is directed to send a certified copy of the present decision to the Presiding Officer of the Industrial Tribunal-II. Parties shall bear their own costs all throughout.