

(1990) 02 BOM CK 0043
In the Bombay High Court
Case No : Writ Petition No. 713 of 1987

Industrial Workers Union

APPELLANT

Vs

M/s. Hindustan Transmission Products Lt. and another

RESPONDENT

Date of Decision : 13-02-1990

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 12(5)

Citation : (1990) 60 FLR 655 : (1991) 1 LLJ 343

Hon'ble Judges : D.N. Mehta, J

Bench : Single Bench

Judgement

1. The writ petition raises an interesting question of law under the Industrial Disputes Act, 1947 whether the employees working in the Head office of an industrial unit situated at Worli should be given parity in the scale of pay and other benefits given to the workmen and the subordinate staff employed in the factory situated at Chandivali of the same concern.

2. The industrial Worker's Union, which is a Trade Union registered under the Trade Unions Act 1926, has filed this writ petition praying that the clerical and the subordinate staff of M/s. Hindustan Transmission Products limited working at the Company's Head Office at Shivsagar Estate, Worli, be given the same wage Scales, dearness allowance and other benefits as enjoyed by the clerical and subordinate staff employed at the Company's factory, at Chandivali. The Petitioners have, therefore, prayed that the Award of the industrial Tribunal dated 11th November 1985 bearing (IT) No. 66 of 1984 be set aside in so far as it rejects the demand of the clerical and subordinate staff employed in the head office of the said company on account of wage scale, dearness allowance and other benefits and that they be given the same wages scales, dearness allowance and other emoluments as enjoyed by the clerical and subordinate staff working at the factory of the Company situated at Chandivali.

3. M/s. Hindustan Transmission Products Limited, Respondent No. 1 herein, is a registered Company under the Companies Act having its head office at Worli,

Bombay, and its factory at Chandivali. The said company employed about 50 Employees in the clerical and subordinate staff at its head office at Worli, and about 60 employees in the clerical and subordinate staff at its factory at Chandivali. The number of employees including workmen employed in the factory at Chandivali numbers about 500.

4. On 20th June 1981 the said company entered into a Memorandum of Settlement with the Association of Engineering Worker, a Trade Union which represented the employees including the workmen in the factory. Under this Memorandum of Settlement, the basic wages of different grades of workmen, dearness allowance and other benefits and conditions, of service were granted by the employers to the workmen and other clerical and subordinate staff working at the factory. By another Memorandum of Settlement dated 24th January 1985 between the employer and the Association of Engineering workers, a Union representing the workers and other Subordinate and clerical staff working at the factory the wages dearness allowance and other benefits and conditions of service were settled therein.

5. On 1st September 1983, a Charter of Demands was presented to the employers by the subordinate and the clerical staff working at the head office of the said company. On 10th May 1984, a reference was made by the Government to the Industrial tribunal u/s 10 and Section 12(5) of the industrial Disputes Act, 1947 After recording evidence and considering various documents, the Industrial Tribunal published its Awards dated 11th November 1985. Under this Award, the basic wages, dearness allowance and other benefits of the clerical and subordinate employees were fixed on the basis of the wage structure of a concern known as "Devidayal Electronics and Wires limited". It is the Petitioners' contention that the wages and other benefits fixed by the Industrial tribunal under the said Award compared unfavourably with the wages and other benefits drawn by the subordinate and the clerical staff employed at the factory of the same concern. Hence this was a case of discrimination between the employees similarly situated.

6. Shrimati Mhatre, learned counsel appearing on behalf of the Petitioners, submitted that the subordinate and the clerical employees based at the Head office did much the same kind of work which the subordinate and the clerical employees at the Chandivali factory did. Shrimati Mhatre contended that the award was not based upon the principle of "equal pay for equal work" and to that extent it had resulted in the subordinate and clerical staff at the head office of the company being treated unfairly and unjustly. Shrimati Mhatre submitted that here were two sets of employees doing basically similar work, one at the head office at Worli and the other at the factory at Chandivali, and there was no reason at the head office should not be treated on par with the subordinate and clerical employees based at the factory.

7. In support of her submission, Shrimati Mhatre relied on the observations of the supreme Court in the case of workmen of Hindustan Motors v. Hindustan

Motor 1962 II LLJ 352 to the effect (p. 355) :

"There can be no dispute that it is ordinarily desirable to have as much uniformity as possible in the wage-scales of different concerns of the same industry working in the same region. It may not always be possible to attain this object because of the different financial capacities of different concerns. Where however no such obstacle is present. Industrial adjudication always tries to secure the same wage-rates of the different concerns in the same industry in the same region. On the one hand, this tends to the maintenance of industrial peace in the entire region and on the other it puts of the different companies of the industry on more or less equal footing in their production struggle."

8. Shrimati Mhatre next cited the observations of the Supreme court in the case of Greaves Cotton and Co. and Others Vs. Their Workmen, to the following effect (p. 349).

"Time has now come when employees getting same wages should get the same dearness allowances irrespective of whether they are working as clerks or members of subordinate staff or factory - workmen. The pressure of high prices is the same on these various kinds of employees. Further, subordinate staff and factory workmen these days are as keen to educate their children as clerical staff and in the circumstances there should be no difference in the amount of dearness allowance between employees of different kinds getting same wages. Further, an employees whether he is of one kind of another getting same wage hopes for the same amenities of life and there is no reason why he should not get them, simply because the is, for example, a factory workmen though he may be coming from the same class of people as a member of clerical staff."

9. Shrimati Mhatre also relied on the observations of the Supreme court in the case of Randhir Singh Vs. Union of India (UOI) and Others, , where the issue was whether the petitioner, who was a driver constable in the Delhi Police Force, and others employed in the same rank were entitled to the same scale of pay as drawn by the drivers in the service of the Delhi Administration and the Central Government on the principle of equal pay for equal work. Their Lordships were pleased to observe (p 348) :

"It is true that the principle of equal pay for equal work is not expressly declared by our Constitution to be a fundamental right. But it certainly is a constitutional goal. Art. 39(d) of the Constitution proclaims equal pay for equal work for both men and women as a direction Principle of State policy. Equal pay for equal work for both man and women means equal pay for equal work for everyone and as between the sexes, Directive principles as has been pointed out in some of the judgments of this court, have to be read into the fundamental rights as a matter of interpretation. Art. 14 of the Constitution enjoins the state not to deny any person equality before the law or the equal protection of the laws and Art. 16 declares that there shall be equality of opportunity for all citizens in" matters relating to employment or appointment to any office under the state. These

equality clauses of the constitution must mean something to everyone. To the vast majority of the people the equality clauses of the Constitution would mean nothing if they are unconcerned with the work they do and the pay they get. To them the equality clauses will have some substance if equal work means equal pay."

10. Shrimati Mhatre, relying on the observations, cited heretofore, contended that the clerical of M/s. Hindustan Transmission products Limited were entitled to receive the same wage scales and other benefits as enjoyed by the clerical and subordinate staff working at the factory. Shrimati Mhatre, therefore, urged that the Award in so far as it denies parity of wage-scales to two sets of workmen doing basically the same work must be set aside on the ground that it flouts the principles of "equal pay for equal work."

11. Shri Puri, learned Counsel appearing on behalf of the Respondents has pointed out several reasons why the Industrial Tribunal did not accept the principle of parity and direct that the wages and other emoluments paid to the clerical and subordinate staff working at the head office should be given the same pay-scales and other benefits as enjoyed the clerical and subordinate staff working in the factory. Shri Puri, firstly, pointed out that the wages scales and other benefits given to the clerical and subordinate staff employed at the factory were arrived at under the two Memorandum of settlement dated 20th June 1980 and 24th January 1985. Shri Puri contended that while arriving at the wage scales under the Memorandum of Settlement different considerations prevailed than while arriving at the wage scales under the Award. In the case of a Memorandum of settle, the principle of "give and take" between the employer and the workmen prevailed; whilst the Award was based on certain principles or precedents.

12. Shri Puri next pointed out that the conditions of work of the clerical and subordinate staff employed at the head office were different from those of the clerical and subordinate staff employed in the factory. The hours of work of the clerical and subordinate staff at the factory were 43 to 45 hours per week; whereas those of the clerical and subordinate staff employed at the head office were 40 per week. The employees at the factory worked in shifts and even the clerical and subordinate staff were expected to work in night shifts, if required. The employees at the head office had regular or fixed hours of work during the day. Further, the employees at the factory worked even on Sundays and enjoyed only six or seven holidays in a year; whereas the employees in the head office enjoyed all Sundays, as holidays and also enjoyed about twenty-six holidays in a year. Shri Puri submitted that the environment in which the employees in the factory worked was different from the environment in which the employees in the head office worked. Further the factory was situated in an industrial area and therefore the employees at the factory had to travel a longer distance than those employed at the head office. Shri Puri submitted that the Tribunal had taken all these factors into consideration and, after having considered these various

factors, came to the conclusion that it was not possible to fix the wage-scales of the employees at the head office on par with the employees working in the factory.

13. In support of his submission, Shri Puri relied on a ruling of the Supreme court in the case of *Herbertsons Ltd. v. Workmen* 1977 L. I.C. 162 wherein their Lordships observed :

There may be several factors that may influence parties to come to a settlement as a phased endeavour in the course of collective bargaining. Once cordiality is established between the employer and labour in arriving at a settlement which operates well for the period that it is in force there is always a likelihood of further advances in the shape of improved emoluments by voluntary settlement avoiding friction and unhealthy litigation. This is the quintessence of settlement which court and tribunals should endeavour to encourage. It is in that spirit the settlement has to be judged and not by the yardstick adopted in scrutinising an award in adjudication. The tribunal fell into an error in invoking the principles that should govern a dispute regarding dearness allowance in judging whether the settlement was just and fair".

14. Shri Puri also relied on the observation of the Supreme court in the case of *Workmen of Western India Match Co. v. Wimco*. 1962 I L.L.J. 661 to the effect (p. 667) :

"We do not think that there is any valid reason for compelling employers to offer uniform terms of employment to their employees working in different establishments because various considerations must enter into the question, such as the value of their work to the employer, the employer's ability to pay, the cost, of living, the availability of persons for doing the particular kind of work and so on. Indeed, the Minimum Wages Act itself large discretion in so far as the most important condition of service is concerned, that is, pay, so long as it is not below the minimum, was prescribed. It is well-known fact that the biggest employer the state, does not offer uniform conditions of service to all employees doing work which, broadly speaking may be called similar."

Shri Puri pointed out that the Award was just, fair and reasonable and hence this court ought, not to interfere with the same.

15. Now, it is necessary to point out that this court exercises its jurisdiction under Article 226 of the constitution and that jurisdiction has to be exercised with great circumspection. the court cannot interfere unless it is pointed out that the tribunal had committed some illegality or irrationality or procedural impropriety. In this regard, it will be appropriate to cite the observations of the Supreme court in the case of *Sadhu Ram Vs. Delhi Transport Corporation*, to the effect (PP. 383-385) :

"The jurisdiction under Art. 226 of the constitution is truly wide, but for that very, reason it has to be exercised with great circumspection. It is not for the

High Court to constitute itself into a appellate Court over Tribunals constituted under special legislations to resolve disputes of a kind qualitatively different from ordinary civil disputes and to re-adjudicate upon questions of fact decided by those Tribunals. That the questions decided pertain to jurisdictional facts does not entitle the High court to interfere with the findings on jurisdictional facts which the Tribunal is well competent to decide. Where the circumstances indicate that the Tribunal has snatched at jurisdiction, the High court may be justified in interfering. But where the Tribunal gets jurisdiction only if a reference is made and it is, therefore, impossible ever to say that the Tribunal has clutched at jurisdiction, we do not think that it was proper for the high court to substitute its judgment for that the Labour court and hold that the workmen had raised no demand with the management."

Further, in the case of Harbans Lal Vs. Jagmohan Saran, the supreme court was pleased to lay down the following

"The limitations on the jurisdiction of the High court under Article 226 of the Constitution are well settled. The Writ Petition before the High court prayed for a writ in the nature of certiorari, and it is well known that a writ in the nature, of certiorari may be issued only if the order of the inferior tribunal or subordinate court suffers from an error of jurisdiction, or from a breach of the Principles of natural justice or is vitiated by a manifest or apparent error of law. There is no sanction enabling the High Court to reappraise the evidence without sufficient reason in law and reach findings of fact contrary to those rendered by an inferior Court or subordinate Court. When High Court proceeds to do so, it acts plainly in excess of its powers."

16. It will be pertinent to keep these observation of the Supreme Court in mind while judging the issue whether the clerical and subordinate staff employed at the head office of the company should be treated on par in respect of wages and other benefits with the similarly placed employees working at the factory. As the Supreme court pointed out in the case of Workmen of Hindustan Motors v. Hindustan Motors cited theretofore, it is ordinarily desirable to have as much uniformity as possible in the wage-scales of the same concern working in the same region. It may, however, not be possible to attain this object because of different financial capacities of different concerns.

17. Now, in the instant case, the Tribunal proceeded on the principle of industry-cum-region formula. The petitioners herein placed before the Tribunal the wages-scales, dearness allowances and other benefits accruing to the three industries, viz. (1) Devidayal Non-ferrous Industrial Private Limited; (2) Devidayal Electronics and Wires Limited, and (3) Cable Corporation of India Limited as comparable precedents. The Tribunal refused to accept the wage-scales of the cable Corporation of India Limited on the ground that was a large concern as compared to the company concerned herein and, therefore, there could be no comparison between the cable Corporation of India Limited and M/s. Hindustan Transmission Products Limited, For exactly, the contra reason the Tribunal

refused to accept the wage-scales and other benefits of Devidayal Non-ferrous Industrial Private Limited. Ultimately, the Tribunal as a Devidayal Electronics and Wires Limited as the Comparable concern. It was on this basis that the Tribunal ultimately fixed the pay scales, dearness allowance and other benefits. I do not think that the tribunal did wrong in accepting the wage-scales and other benefits accruing to the clerical and subordinate staff of Devidayal Electronics and Wire Limited as a comparable concern.

18. The Petitioners had also agitated before the Tribunal that the subordinate and clerical staff employed at the head office be given the same scales as those working at the factory at Chandivali. This contention was negated by the Tribunal on the ground that the total number of hours of work per week were different as between the two sets of workers as also the paid holidays enjoyed by them. Since the conditions of service were different, the Tribunal came to the conclusion that the two set of workers could not be treated on par. However, the Tribunal did take into consideration the fact that an attempt had to be made to reduce the gap of the total emoluments received by the staff in the head office and the staff in the factory at Chandivali. Now, it appears to me that the reasoning of the Tribunal is fair, just and logical and I do not see any reason why I should interfere with that finding in the writ jurisdiction.

19. Essentially, there are basic difference in the conditions, of work between the subordinate and clerical staff employed at the head office and those employed at the Factory. Firstly, the hours of work for the staff employed at the head office are different from the hours of work in the case of the staff at the factory. There is no dispute with regard to the fact that the clerical and subordinate staff at the head office put in only 40 hours per week, whereas the clerical and subordinate staff employed at the factory put in between 43 and 45 hours. Then, again, the holidays, enjoyed by the two sets are not the same. The staff working at the factory enjoyed only six or seven holiday in a year and they also worked on Sundays, where as the staff working at the head office enjoyed about 26 holidays in a year as also all Sundays. The staff at the factory worked in shifts, and if required they had to work during the night shift, The staff at the head office worked only for the stipulated hours during the day. Then again, the environment in which the two sets of workers, worked is also different. Furthermore, the factory, being situated in an industrial area, the staff working in the factory would have to cover a greater distance by and large than the staff working at the head office. For all these reasons. I am of the view that the Tribunal was justified in coming to the conclusion that the principle of parity cannot be applied in the case of the staff working in the head office and the staff working at the factory. There is no issue involved herein of the Tribunal having exercised excessive jurisdiction or having failed to exercise jurisdiction vested in it. Again, there is no illegality or irrationality or procedural impropriety with regard to the Award of the Tribunal. There is, therefore, no reason for any interference by this Court.

20. In the result, the Writ Petition is dismissed and rule stands discharged. Each

party will bear its own costs.