
(1961) 01 SC CK 0011

In the Supreme Court Of India

Case No : Civil Appeal No. 239, 240 of 1960

Jardine Henderson Ltd.

APPELLANT

Vs

Their Employees

RESPONDENT

Date of Decision : 13-01-1961

Acts Referred:

Industrial Disputes Act, 1947 — Section 7A

Citation : AIR 1967 SC 515 : (1961) 1 LLJ 641

Hon'ble Judges : P. B. Gajendragadkar, J;K. N. Wanchoo, J;K. C. Das Gupta, J

Bench : Full Bench

Final Decision : Allowed

Judgement

K.N. Wanchoo, J.—These two appeals by special leave will be dealt with together, as they arise out of the same award of the Third Industrial Tribunal, West Bengal. There were disputes between Messrs. Jardine Henderson Ltd. (hereinafter called the company) and their employees represented by two unions (hereinafter called the workmen) with respect to a large number of matters. These disputes were referred to the Third Industrial Tribunal, by the West Bengal Government on November 9, 1957. In the present appeals, however, we are concerned with only three matters out of those referred: (1) Scales of pay, (2) Dear-ness allowance, and (3) Retiring benefits The company's appeal is with respect to retiring benefits while the workmen's appeal is with respect to all the three matters.

2. It is not necessary to set out the case of the parties in detail, as it will appear from what we say with respect to each matter. We shall, therefore, take the three points which survive in these appeals one by one and begin with the company's appeal with respect to retiring benefits.

3. The company was a party before the Mercantile Tribunal, which gave an award in June 1949 with respect to a large number of matters in dispute between the mercantile firms in Calcutta and their employees. It appears that the Mercantile Tribunal almost uniformly awarded one single retiring benefit in the form of

contributory provident fund with a contribution on either side of 10 per cent of the basic pay in the case of clerical staff and 6V4 per cent of the basic wage for the subordinate staff. Only in cases where the employers voluntarily introduced more than one scheme, the Mercantile Tribunal could not and did not reduce the benefit. But in such cases where there was double benefit, it was provided that the company's contribution to the provident fund would be deducted from the gratuity payable, (see *James Finlay and Co. Ltd. Employees Union v. James Finlay and Co. Ltd.* Calcutta, 1957 Lab 154. That pattern seems to be prevalent in Bengal. The workmen, however, claim that the company should not make any deduction from the gratuity with respect to its contribution to the provident fund. In fact this means in case of those firms which are paying double benefit, an increase in the amount of gratuity. The tribunal allowed this claim considering that the demand of the workmen was reasonable. The company in its appeal contends that the tribunal was wrong in thus increasing the gratuity, particularly as it had found when dealing with the scales of pay that the financial position of the company had deteriorated since the award by the Mercantile Tribunal in 1949 and a reduction in the wage-structure would be justified and not an increase as claimed by the workmen. Consequently it refused the claim of the workmen for an increase in the wage-structure, though it did not reduce it. The contention on behalf of the company is that the tribunal seems to have overlooked this finding of its own when it decided to increase the burden on the company with respect to gratuity, when it said that it appeared that the company had also financial capacity to bear the burden. Reliance in this connection was placed on *The Indian Hume Pipe Co. Ltd. Vs. The Workmen and Another*, , where it was pointed out that the financial position of the employer must be considered and the tribunal must keep in mind whether the burden of the scheme can be borne by him before it proceeds to frame a scheme for gratuity. In the present case, the question is not of framing a scheme for gratuity but increasing the burden placed on the company over and above what the scheme already in force provides. In such cases also the same principle, namely, the capacity of the employer to bear the financial burden must always be kept in mind. It is submitted on behalf of the company that when the tribunal found that the financial position of the company had deteriorated since 1949 and there was even a case for reduction in the wage-structure (though it actually did not do so), it was inconsistent on the part of the tribunal to hold that the company could bear the further burden of the increased gratuity which would result if the condition relating to deduction of the company's contribution to provident fund is deleted from the gratuity scheme. We are of opinion that when the tribunal found that there was a case for reducing the scales of pay (though it did not do so in fact) in view of the financial position of the company, its observation that the company had the financial capacity to bear the further burden which was placed on it in the matter of gratuity is completely unjustified. We may add that learned counsel for the workmen has not been able to satisfy us that the tribunal's conclusion that the financial position of the company has deteriorated since 1949 is unjustified or perverse. Salaries or wages are the first charge on an employer and if a tribunal

finds that the financial position is such that salaries or wages may have to be reduced there is no justification for putting further substantial burdens on him in other directions. The appeal of the company must therefore be allowed and the provision contained in the gratuity scheme to the effect that from the gratuity payable the company's contribution to provident fund will be deducted, restored.

4. This brings us to the appeal of the workmen. We shall first take the question of scales of pay. As already indicated, the finding of the tribunal in this connection is that the financial position of the company has deteriorated since 1949 and there is no case for an increase in the scales of pay, though perhaps a case may be made out for its reduction. We have held this conclusion of the tribunal to be not unjustified and in the circumstances we are of opinion that there is no case for an increase in the scales of pay.

5. The next point raised on behalf of the workmen is with respect to dearness allowance. The clerks are getting dearness allowance according to what is called the Bengal Chamber of Commerce scale linked with middle-class cost of living index. So far as this is concerned, there was no grievance made before the tribunal; but with respect to the subordinate staff the demand was that its dearness allowance should also be linked with the middle-class cost of living index. The tribunal rejected this contention on the ground that the difference between middle-class cost of living index and working-class cost of living index lay in the stress which is placed on different items of necessities. The subordinate staff could not have any grievance on that score and could not, therefore, ask for dearness allowance linked with middle-class cost of living index. It cannot be said that this conclusion of the tribunal is unjustified; nor is it possible in view of the finding as to the financial capacity of the company to increase the burden of dearness allowance for the subordinate staff by linking it with the middle-class cost of living index.

6. The last point raised on behalf of the workmen is with respect to retiring benefits for the subordinate staff. As already pointed out, the mercantile award provided 10 per cent contribution on either side for the clerical staff and 61/4 per cent contribution for the subordinate staff in the contributory provident fund scheme. Further the scheme of gratuity in force in the company provides double the rates in the case of clerical staff as compared to the rates for the subordinate staff. The workmen's demand was that the scales should be the same for both the clerical staff and the subordinate staff. The tribunal rejected this claim on the ground that different rates were justified as the clerks had more commitments to fulfil than the members of the subordinate staff. It seems that different rates are the usual feature in Bengal and it cannot be said that the reason given by the tribunal for upholding the difference is unjustified. Besides if the rates for the subordinate staff are brought at par with the rates for the clerical staff there will be a further burden on the financial capacity of the company, which as we have already indicated, the company is unable to bear. Therefore, there is in our opinion, no reason to interfere with the conclusion of the tribunal in this regard

also.

7. We, therefore, allow the appeal of the company and restore the term as to deduction of the company's contribution to provident fund from the gratuity payable as provided in the gratuity scheme. The appeal of the workmen fails and is hereby dismissed. In the circumstances, we pass no order as to costs.