

(1962) 04 CAL CK 0023
In the Calcutta High Court

Manton and Co. Ltd.

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 16-04-1962

Acts Referred:

Citation : (1962) 2 LLJ 444

Hon'ble Judges : B.N. Banerjee, J

Bench : Single Bench

Judgement

B.N. Banerjee, J.—This rule is directed against an award made by the second industrial tribunal, West Bengal. Various items of industrial disputes are referred to the tribunal but in this rule I am concerned with three of the disputed items, namely, scales of pay, dearness allowance and gratuity.

2. The petitioner Manton & Co., Ltd., is a dealer in fire-arms in Calcutta. It imports, (fells and repairs guns, rifles and other firearms and also deals in ammunitions. The company started its business in the year 1825 and was formerly under European management. In the year 1946 the company changed into Indian hands. The total number of workmen in the establishment of the petitioner company is 46. They are monthly rated workmen. The union of the workmen of the petitioner company presented a charter of demands for fixation of a new scale of pay, increase in dearness allowance and establishment of gratuity or retirement benefit scheme.

3. On the question of scale of pay the tribunal came to the following conclusions:

This company is not an industry. It has only an ordinary repairing shop for guns. It is not a big importer of foreign goods. It has a very small establishment, which cannot be compared with the very big establishments of the mercantile firms situated in this area. It is only a shop with sales amounting to rupees seven lakhs a year, as would be seen from the balance sheets. Taking all these facts into consideration, I am not able to accept the scales of pay demanded by the union on the analogy of the scales of pay prevailing in the mercantile firms with

which the present company is not comparable and I think that it would be more proper to apply in this case the scales of pay fixed for the non-matriculate clerical staff by the third major engineering tribunal.

4. Thereafter, the tribunal fixed different grades of pay for the clerical staff, the gun cleaners, the polishers and the unskilled workmen. The tribunal, however, did not fix any grade of pay for the is the men and turners.

5. So far as dearness allowance is concerned; the tribunal came to the following conclusions:

in the engineering tribunal's award dearness allowance was fixed at Rs. 86 per mensem for employees upto the pay range of Rs. 50 and Rs. 47 for pay range from Rs. 51 to Rs. 100. Even these scales would be high for this company since it is not an industry and its financial position is just looking up. In the matter of dearness allowance capacity of the employer to pay is one of the prime considerations and where capacity is wanting, full neutralization of the rise in the cost of living cannot be expected. Taking all facts into consideration, I fix the dearness allowance for the pay range upto Rs. 50 at Rs. 30 and for the pay range from Rs. 51 to Rs. 100 at Rs. 40.

6. So far as gratuity is concerned, the tribunal was of the opinion that a scheme for gratuity would be more appropriate and would benefit the old employees more than the provident fund scheme. The tribunal; therefore, awarded that the company should pay gratuity at the rate of half a month's pay for each completed year of service upto a maximum of 16 months' pay, on the retirement or death of an employee, who has rendered continuous good services for not less than 20 years.

7. The propriety of the award is being disputed before me at the instance of the petitioner company, which has asked for a writ of certiorari for quashing the award.

8. Mr. Arun Kumar Dutt (Sr.), learned advocate for the petitioner company, contended with great emphasis that in increasing the pay-scales the tribunal did not keep in view the well-known tests laid down by the Supreme Court. He relied, in the first place, on the judgment of the Supreme Court in *Express Newspapers (Private) Ltd. and Another Vs. The Union of India (UOI) and Others*, . In that decision Bhagwati, J., laid down the following tests or principles for fixation of wage-rates, namely:

(1) in the fixation of rates of wages, which include within its compass the fixation of scales of wages also, the capacity of the industry to pay is one of the essential circumstances to be taken into consideration, except in cases of bare subsistence of minimum wages where the employer is bound to pay the same irrespective of such capacity;

(2) the capacity of the industry to pay is to be considered on an industry-cum-region basis after taking a fair cross-section of the industry; and

(3) the proper measure for gauging the capacity of the industry to pay should take into account the elasticity of demand for the product and the possibility of tightening up the organization, so that the industry could pay bigger wages without difficulty and the possibility of increase in the efficiency of the lowest paid workers resulting in increase in production considered in conjunction with the elasticity of demand for the product?no doubt against the ultimate background that the burden of increased rates should not be such as to drive the employer out of business.

9. He also relied on another Judgment of the Supreme Court in *Novex Dry Cleaners v. its workmen* 1962 I L.L.J. 271, in which Gajendragadkar, J.; reiterated almost identical views. It is not the case of the workmen that they were being paid not even the minimum wages. The fixation of wage structure has to be made with a view to fill up the gap between the minimum wages and living wages. In order to do so the tests laid down by the Supreme Court have to be borne in mind and applied. The tribunal, as is apparent, did not keep any of the tests, laid down by the Supreme Court, in its view when it fixed the different scales of pay for different workers. According to the tribunal itself, the affairs of the petitioner company was just looking up. At this stage to impose upon it a burden of increased pay-scale without taking into consideration how much increase the financial capacity of the company may absorb may result in disastrous consequences for the company and must not be allowed to be too easily done.

10. Mr. Dutt next contended that the tribunal was wrong in relying upon the third major engineering tribunal award, which was not even in evidence in this case. He relied on the observations of Venkatarama Ayyar, J., in the case of *Dalmia Dadri Cement, Ltd. v. Avtar Narain Gujrat* 1962 I L.L.J. 261, in which his lordship observed that whether the tribunal can refer to an award given by it in another case would depend upon the circumstances of each case. But where there was other evidence considered, reference to such an award would not affect the decision of the tribunal. Mr. Dutt is right in his submission that the tribunal placed too much reliance on the third major engineering tribunal, when it should have looked more to the evidence on record than to anything else.

11. I now turn to consider the grievance of the petitioner company so far as the direction as to payment of dearness allowance is concerned. Unless pay-scales are properly fixed, the question of payment of dearness allowance does not arise. The dearness allowance is paid to bridge the gap between the minimum wages and living wages, as far as possible, without effecting cent per cent neutralization of the increased costs of living, excepting in the case of the lowest paid employees. Unless a proper pay scale is fixed, it cannot be ascertained what dearness allowance, if any at all, should be given to the workers and this would again depend on the financial capacity of the company to pay. For the aforesaid reasons the amount of dearness allowance fixed by the tribunal, without reference to the financial capacity of the company to pay, and without properly

fixing the pay scale, cannot be allowed to stand.

12. I now turn to examine the last grievance made by the petitioner company, namely, payment of gratuity. I am not satisfied with the materials on record and on the findings arrived at by the tribunal that the company has funds enough to start a gratuity fund or a gratuity benefit scheme. Without those materials the award in this respect cannot be allowed to stand.

13. Mr. Dutt also invited my attention in this respect to that portion of the award by which while deciding the issue as to gratuity referred to it, the tribunal also fixed the retiring age of the workers, an issue which had been referred to the tribunal. That portion of the award, namely, the portion which fixed a retiring age for the workers of the petitioner company, was beyond the competence of the tribunal to make.

14. For the reasons aforesaid, I am of the opinion that the award of the second industrial tribunal on issues as to pay-scale, dearness allowance and gratuity must be quashed. I order accordingly.

15. I have quashed the award because the industrial tribunal did not determine the issues as it should have done under law. I hope the State Government will again place the matters before a tribunal so that the industrial disputes may be finally adjudicated according to law.

16. Let a writ of certiorari accordingly issue quashing the aforesaid portion of the award. I make it perfectly clear that the decision in this rule will not touch the validity of the award in respect of other issues.

17. This rule is made absolute without any order as to costs.