

(1961) 08 P&H CK 0027
In the Punjab And Haryana At Chandigarh

Punjab Distilling Industries Ltd.	Vs	APPELLANT
State of Punjab and Others		RESPONDENT

Date of Decision : 17-08-1961

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 10

Citation : (1963) 2 LLJ 29

Hon'ble Judges : Tek Chand, J

Bench : Single Bench

Judgement

Tek Chand, J.—This is a writ petition under Article 226 of the Constitution praying for the issuance of an appropriate writ or order quashing an award dated 28 December 1960, given by the presiding officer of the industrial tribunal, Punjab, Patiala. The petition is being opposed by the Distillery Mazdoor Union, Khalsa.

2. The Punjab Distilling Industries, Ltd., Khalsa, the petitioner, is a public company and in pursuance of the provisions of Section 10(1)(d) of the Industrial Disputes Act, 1947, the Governor of Punjab referred the following disputes between the petitioner-company and its workmen to the presiding officer of the industrial tribunal by order dated 30 July 1960:-

(1) Whether the grades and scales of pay be fixed after placing the workmen in proper categories? If so, with what details ?

(2) Whether the dearness allowance allowed to the workmen be linked with the price index? If be, the manner in which it should be done ?

It is only the first matter of reference which arises in this petition.

3. On a notice from the tribunal, the workmen submitted their written statement of claim on behalf of the Distillery Mazdoor Union on 14th August 1960. The company also submitted its written statement together with documents on which it had relied on 18 August 1960. Copies of the two written statements are attached with this petition as annexures B and C. Respondent 2 gave his award

on 26 December 1960, and it was published in the official gazette on 13 January 1961. The grades of the workmen have been fixed after making three categories. The scales of wages fixed for each category are indicated below:

(1) Skilled ... Rs. 100-4-140/5-165 (2) Semi-skilled ... Rs. 70-2-90/3-105 (3) Unskilled ... Rs. 60-2-80/3-95

It was ordered that the company shall pay to the workmen in accordance with the above scales from 1 August 1960. Demand 2 was not pressed by the union and was, therefore, dismissed. The legality of the award has been challenged on two grounds: firstly that it was beyond the scope of reference and, secondly, that it contains errors apparent on the face of the record. It is, therefore, prayed that the award should be quashed. The main objections of the petitioners to the award are-

(1) That the president of the tribunal had exceeded his jurisdiction in fixing the grade of unskilled workmen at Rs. 60-2-80-3-95 which is in excess of the demand made for them by the union, as for the unskilled workmen they had demanded a grade of Rs. 60-1-70.

(2) The company felt aggrieved by the order of the tribunal in so far as it directed that the workmen should be paid in accordance with the scales fixed by it with effect from 1 August 1960, and thus the award was being given retrospective effect. Moreover, the workmen had not asked for retrospective operation of the award with effect from 1 August 1960.

(3) That the conclusion of the tribunal that the company could afford to bear the extra financial burden was not deducible on the record. Annexure A relied upon by the tribunal had been wrongly construed and the tribunal had not taken into consideration that a fresh burden of Rs. 48,000 per year had been imposed upon the company which it could not bear.

(4) It was next urged that the scales had been fixed for a number of workmen engaged by the company on daily-wage basis. This, it was submitted, was not justified, because the company could not be compelled to pay them on monthly basis which was against the terms of their employment and furthermore, the respondent was not invited to adjudicate with respect to the workmen engaged on daily wage basis.

(5) It was alleged that it was the duty of the workmen to prove justification or rise in their wages by showing a similar rise in the case of workmen in the other distilleries in the Punjab. The tribunal should not have justified the increase on the ground that the company had omitted to furnish proof of the wages given to each workman by the other two distilleries. This reasoning of the tribunal was assailed on the ground that the burden of proof of negative was erroneously placed upon the company.

(6) The basis on the strength of which the wages of workmen in other factories engaged in different trades was also questioned.

4. The union of workmen opposed the petition and maintained that the award of the tribunal was just and in accordance with law. It was also contended that the relief sought could not be granted to the company in view of the narrow scope of Article 226 of the Constitution of India.

5. I may now deal with the principal arguments which have been advanced by the parties" learned Counsel.

6. The Supreme Court has in two recent cases laid down the principles which should be borne in mind in industrial disputes. In the case of industrial dispute arising out of a demand for increase in wages in Express Newspapers (Private) Ltd. and Another Vs. The Union of India (UOI) and Others, Bhagwati, J., said at p. 367-

The principles which emerge from the above discussion are:

(1) that in the fixation of rates of scales 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 or minimum wage where the employer is bound to pay the same irrespective of such capacity;

(2) that 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) that the proper measure for gauging the capacity of the industry to pay should take into account the elasticity of demand for the product, the possibility of tightening up the organization so that the industry could pay higher 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 the increased rate should not be such as to drive the employer out of business.

The above observations were approved in Lipton Limited and Another Vs. Their Employees, A distinction was drawn between "minimum wages," "fair wage" and a "living wage." In the case of determining "minimum wage" it was the first charge on an industry and no industry had the right to exist unless it was able to pay its workmen minimum wage. The consideration of payment of a " fair wage" or a " living wage " depended upon financial capacity of the particular industry in a specified region. It is not the case of the respondents that the existing wage does not come up to " minimum wage " which the company must pay to its workmen whether its financial capacity justifies this or not. The present dispute concerns with % " fair wage " and the capacity of the industry to pay becomes a vital circumstance. The case of Lipton Limited and Another Vs. Their Employees, (vide supra), also decided that the wage-structure could be determined by reference to the comparable industries. This judgment was also relied upon for showing that retrospective effect ought not to have been given to the new scales

of pay. The main argument on behalf of the company is that the presiding officer of the industrial tribunal in making his award disregarded the principles as set out by the Supreme Court in these two cases. The presiding officer referred to a statement showing production, sales, profits, bonus, dividends and wages paid annually since 1950 by the company which was marked by him as annexure A." This document had been produced in an earlier dispute between the parties relating to fixation of the rate of bonus. In 1945, the share capital of this company was Rs. 50,00,000 which was later on reduced to Rs. 15,00,000 and Rs. 35,00,000 had been refunded. The counsel for the company maintained that this reduction was necessitated as the company could not profitably utilize the amount of Rs. 35,00,000 for expanding the company. This annexure A shows that from 1956-57 onward the net profits of the company had been falling from Rs. 4,95,492 to Rs. 4,72,034 in the next year and to Rs. 3,39,468 in the year 1958-59. According to the balance sheet for the year 1959-60, the net profits are Rs. 1,57,052. There has also been a fall in the production of spirits and CO2 gas after 1957-53 though there has been a rise both in production and sale so far as Pharmaceuticals are concerned. According to the same chart, the total wages and salaries paid have been steadily on the increase after 1954-55 from Rs. 2,71,864 to Rs. 3,17,971 in 1958-59. The argument of the learned Counsel for the company is that annexure A attached with the award has been erroneously construed; whereas it depicts that the financial position of the concern had been going down. It had been construed to justify the fixation of scales of wages at a higher standard. To my mind, the learned presiding officer was not justified in drawing the conclusion in support of his decision from this chart. The presiding officer also cited from a previous award given in the case of a dispute between the parties on the question of payment of gratuity to the workmen wherein he had stated that the company had the stability and ability to bear the financial load that might be involved if the gratuity was held to be payable to the workmen on resignation under certain condition and on termination of their services after five years of service. The learned Counsel for the company contends, add in my view with justification, that it was erroneous to argue that because the company was found to bear the financial load in 1950 which, amounted to Rs. 5,000 with regard to the gratuity, it was, therefore, also capable of bearing at present the additional load of Rs. 48,000 a year which would further rise at the rate of Rs. 4,000 a year when increments are earned by the workmen on the scales provided by the presiding officer. The tribunal also determined the scales of wages by comparing the conditions prevailing in certain other concerns of Amritsar dealing in calico printing, worsted spinning, wheels and cotton textiles. According to the principles laid down in the two decisions of the Supreme Court referred to above, the comparison of the scales of wages ought to have been with the other distilleries working in the Punjab. At present, there are three distilling companies in the Punjab including the petitioner-company. The presiding officer in fixing higher scales of wages adversely commented that the petitioner-company had not furnished the scale of wages in the either two distilleries. in my view, it was for the respondent-union to place

material before the presiding officer regarding the scale of wages prevailing in those distilleries and if the material on the record justified the increase by comparison with what was being paid to the workmen in the other two distilleries, he might have taken that into consideration. Omission on the part of the petitioner-company to furnish the wage-structure in the other two distilleries could not be taken as a proof or justification for fixing the wages at higher scales.

7. It was next contended that the presiding officer went beyond the scope of the reference in fixing the scale of wages for the unskilled workman at a higher rate than what had been demanded by the respondent-union. It was argued that, firstly, there was no justification for raising the pay-scale to, as demanded by the workmen, that is, Rs. 60-1-70 and secondly, in no case could the presiding officer have fixed pay-scales in excess of the demand of the workmen, that is, at Rs. 60-2-80/3-95. The principle governing the grant of relief in civil Courts is that where the plaintiff has asked in the plaint for less than what he is entitled to, the Court cannot give him relief in excess of that in the plaint unless the plaint is amended before judgment. Reference in this connexion may be made to *Percival v. Collector of Chittagong* ILR 1903 Cal. 616. The Bench observed-

The Court has no power to make a decree in favour of the plaintiff beyond the amount of the claim stated in the plaint.

8. There is no special reason for departure from this rule of civil law in the matter of industrial disputes particularly when there is no reference to any material justifying the grant of relief in excess of what has been prayed.

9. The presiding officer did not give any reason for ordering payments at higher scales with retrospective effect, that is, from 1 August 1960. Reference to the remarks of the Supreme Court in *Lipton Limited and Another Vs. Their Employees*, has already been made above.

10. Annexure B, which has been attached with the award by the presiding officer, contains list of workmen together with their categories as fixed by the assessor and accepted by the parties. This statement shows that workmen between serial Nos. 162 and 238 were workers receiving daily wage. Some of them were semi-skilled and the others were unskilled. A few had also been allotted skilled category. According to the contention of the company, the case of the employees who were in receipt of daily wage was beyond reference. They were not regular employees of the company and the conditions of their employment were not the same as those of regular workmen in receipt of monthly wages. The assessor was required to fix the categories of the workmen depending upon whether they were skilled, semi-skilled or unskilled. The inclusion of the workmen in the receipt of daily wages in the statement annexure B did not amount to an acceptance on the part of the company that they should be treated at par with workmen in receipt of monthly wages. There is force in this contention.

11. Mr. Anand Sarup drew my attention to a decision of the Supreme Court in *Satyanarayan Laxminarayan Hegde and Others Vs. Millikarjun Bhavanappa*

Tirumale, , wherein It was laid down that the High Court, under Article 227, could not interfere where a decision was erroneous but the error was not apparent on the face of the record.

This is not the case here The errors to which reference has been made are apparent from the perusal of the order of the presiding officer when seen with the two annexures attached by him to his order.

12. It was next complained on behalf of the company that statements of five witnesses produced before the tribunal were not taken into consideration by the tribunal. There certainly is no preference to their testimony and It appears that their evidence has been omitted from consideration. This is, again, a serious error committed by the tribunal as the principles laid down by the Supreme Court in the Express Newspapers (Private) Ltd. and Another Vs. The Union of India (UOI) and Others, and the Lipton Limited and Another Vs. Their Employees, have. been disregarded, and, in view of other errors of a serious nature committed by the tribunal, the award suffers from grave infirmities.

13. I, therefore, quash the order of the presiding officer of the industrial tribunal, Punjab, Patiala, dated 24 December 1960; but I remand the case for fresh decision to be given on the evidence on record and in the light of the observations made in the two decisions of the Supreme Court referred to above. The parties are, however, left to bear their own costs in this Court.