

(1967) 09 MAD CK 0050
In the Madras High Court

Southern India Tannery

APPELLANT

Vs

Industrial Tribunal and Another

RESPONDENT

Date of Decision : 28-09-1967

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1969) 2 LLJ 157

Hon'ble Judges : Ramakrishnan, J

Bench : Single Bench

Judgement

Ramakrishnan, J.—On a reference by the Government of Madras, the Industrial tribunal, Madras, considered the issue whether the demand of the workers employed in certain tanneries in Tiruchirappalli for the introduction of a gratuity scheme is justified and if so to formulate a scheme, in Industrial Dispute No. 31 of 1964. There were nine tanneries concerned in the case. They were all respondents as against the secretary, Tiruchi Tannery Workers Union, Tiruchi, who was the claimant. The Southern India Tannery, Tiruchirappalli, the petitioner in this writ petition, was respondent 5 in the industrial dispute. The tribunal came to the conclusion that in respect of tanneries other than the petitioner herein, their financial position was so poor that the burden of a gratuity scheme, if imposed on them, would be "the last straw that would break the camel's back." But no such impediment arose in the case of the petitioner whose financial position was considered quite sound, and that justified the introduction of a gratuity scheme; and a detailed gratuity scheme was also outlined in the order of the industrial tribunal. Apparently, there was an argument before the tribunal that the reference by the Government regarding the dispute above mentioned was not sponsored by a majority of the employees of the establishment, who were also members of the union and who claimed the benefits. But the tribunal observed that from the outset this was not an individual dispute, but a collective dispute affecting all the workers in the petitioner's establishment and therefore there was no necessity for the dispute being sponsored by a majority of the employees of the establishment or at least by a substantial number of them.

Finally, the tribunal framed a scheme in respect of the employees in the petitioner's concern and desisted from doing so in the case of the remaining concerns.

2. Against the above order of the tribunal, the petitioner has filed this writ petition under Article 226 of the Constitution of India praying for the issue of a writ of certiorari quashing the order of the tribunal.

3. When the writ petition came on for hearing, the learned Counsel appearing for the petitioner has not been able to contradict the findings of the tribunal that all the tanneries, except respondent 5 therein, had very poor and limited resources and that the framing of a gratuity scheme would be an additional burden, which they would not be able to bear. But such a consideration will not apply to the case of the petitioner. In fact, the order of the tribunal shows all the respondents, except the petitioner herein, filed their profit and loss accounts and balance sheets to substantiate their contention about their limited resources. But the petitioner refrained from doing so. Even in the affidavit set out in the writ petition, this petitioner has not alleged that his financial position is such that the gratuity scheme would be an intolerable burden on him. That the financial resources of a concern would be a relevant factor for deciding the necessity of a gratuity scheme is settled by authority. It is also settled that the fact that one concern is required to frame a scheme and another concern is not so required will not amount to discrimination. In *Gujarat Engineering Co. v. Ahmedabad Miscellaneous Industrial Workers' Union* 1961 II L.L.J. 660, the Supreme Court has observed as below:

The fact that in similar other concerns, there is no gratuity scheme for the benefit of workmen must be held immaterial in adjudicating on the demand for introduction of a gratuity scheme. The proper way to look at the problem is that if a gratuity scheme can be introduced in a concern taking into account its financial position, it should not be refused simply because no gratuity scheme is in force in similar other concerns.

Consequently, no substantial objection could exist for the framing of a gratuity scheme so far as the petitioner is concerned. The petitioner has not attacked the details of the gratuity scheme framed by the tribunal. In fact it appears to be a reasonable scheme which will not be an undue burden on the management.

4. The further argument of the learned Counsel for the petitioner is that the dispute referred by the Government to the industrial tribunal for adjudication is not a collective industrial dispute, because the requisite number of members of the establishment have not sponsored the resolution of the union concerning the dispute. But the learned Counsel for the respondent points out that the principle about the sponsoring of an individual dispute by a collective body of workmen was laid down in *The Bombay Union of Journalists and Others Vs. The "Hindu", Bombay and Another*, while dealing with a dispute which at the outset was only an individual dispute. For ascertaining whether what was at the inception an

individual dispute, had acquired the character of a collective dispute, the test is whether at the date of the reference, the dispute was taken up or was supported by the union of the workmen or by an appreciable number of the workmen of the employer, against whom the dispute is raised by an individual workman. This principle has been laid down by the Supreme Court in *Workmen of Dharampal Premchand (Saughandhi) Vs. Dharampal Premchand (Saughandhi)*, . There can be no doubt that a dispute about the necessity to frame a gratuity scheme for the workers of a concern, is, from the outset, a collective industrial dispute and there is no question of the necessity of sponsoring such a dispute either by a majority of the workers in the concern or by a substantial number of them before a reference could be made to the industrial tribunal to deal with it. There are no merits in this writ petition which is dismissed with costs.