
(1949) 02 BOM CK 0002
In the Bombay High Court

The Bombay Garage Ltd.

APPELLANT

Vs

The Industrial Tribunal

RESPONDENT

Date of Decision : 15-02-1949

Acts Referred:

Industrial Disputes Act, 1947 — Section 19(3)

Citation : (1953) 2 LLJ 14

Hon'ble Judges : Tendolkar, J

Bench : Single Bench

Judgement

Tendolkar, J.—This is a rule for a writ of certiorari against the industrial tribunal, Bombay, consisting of Mr. P.S. Bakhale in respect of an award made by the tribunal on 20 November, 1948. The petitioners are the Bombay Garage Limited. They commenced business as a limited company on 1 April, 1945 and took over the business of Messrs. F.M. Chinoy and Co. Ltd., who are the proprietors of a concern known as the Bombay Garage. In July, 1946, certain disputes arose between the petitioners and their employees, and by a notification dated 20 March 1948 the provincial Government referred the dispute to the respondent. The demands of the workers were set out in annexure (A) to the said notification and the 3 relevant demands for the purpose of the present petition are as follows:

(3) Dearness allowance at the minimum rate of Rupees 1/8 per day should be paid to every workman with effect from 1 January, 1947.

* * * (9) Gratuity at the rate of one month's salary for every completed year of service should be given after minimum of 10 years.

(f) All the retrenched workmen should be paid gratuity as follows:

(i) After 10 years of continuous, service 15 months' wages,

(ii) After 5 years but less than 10 years continuous service 12 months' wages.

(iii) Less than 5 year³ service 6. months' wages.

2. The award under these heads is challenged as being without jurisdiction,

3. In respect of the dearness allowance, the award is being challenged on the ground that the dearness allowance has been granted to the workers from 1 January, 1947, although the award was published on 28 November, 1948. It is contended by the petitioners that it is not competent to the respondent to award any dearness allowance for a period prior to the date of the award, in as much as u/s 19(3) of the Industrial Disputes Act 1947, an award is binding and remains in operation for such period not exceeding one year as may be fixed by the Provincial Government. The contention is that if a benefit is conferred on the workers by the award which related to some period prior to the date of the award, such benefit would accrue to the workers for a period in excess of the statutory period of one year. In my opinion, there is no substance whatever in this contention. The award comes into operation after a declaration by the provincial Government u/s 15 that it shall come into operation; but the benefits conferred by the award may well relate to any period prior to the award e.g., it is quite obvious that in respect of claims or disputes relating to gratuity or bonus, it must of necessity relate to prior service. I have no doubt, therefore, the respondent had ample jurisdiction to confer any benefits on the workmen for a period prior to the award provided such disputes are referred to the respondent's adjudication, In the present case, dearness allowance as from 1 January, 1947, was specifically referred to the respondent; and in my opinion the respondent had jurisdiction to grant such dearness allowance. Were the law otherwise, it would lead to very startling results. A claim for dearness allowance must of necessity take some time before it is adjudicated upon and if the respondent had no jurisdiction to grant the claim as on the date when it was made, the workers would of necessity lose all their claim to dearness allowance prior to the date on which the award is made. In my opinion such is not the law. The first objection to the award, therefore, fails,

4. Regarding the claim under the sixth head (gratuity) the award is as follows:

I, therefore, direct that gratuity should be paid to all the employees covered by the adjudication on the scale given below :

(i) On the death of an employee while in the service of the company one month's salary for each completed year of service subject to maximum of 15 months' salary to his heirs or executors or nominees.

(ii) On voluntary retirement or resignation of an employee after 15 years' continuous service of the company--15 months' salary.

(iii) On termination of his service by the company:

(a) After completion of service of 5 years but less than 10 years 1/2 month's salary for every completed year of service.

(b) After 10 years' continuous service in the company 3/4 of one month's salary . for each completed year of service.

(c) After 15 years" continuous service in the company 15 months" salary.

4. Gratuity shall not be paid to an employee who is dismissed for dishonesty or misconduct.

Only sub-paras 1 and 3(a) of this award are challenged as being without jurisdiction.

5. The demand was for gratuity after a minimum period of service of 10 years and it seems to me that it was not competent to the respondent to award any gratuity for service of less than 10 years. This point appears to me to have escaped the notice of the respondent who has by sub-paragraph (i) awarded gratuity on the death for any period of service without fixing a minimum period which would qualify a workman for such gratuity. To that extent, therefore, the award is in my opinion without any jurisdiction. With regard to sub-paragraph (3), that relates to gratuity on termination of service by the company and although it appears under the sixth head, it seems to me that it is an award under the ninth head which relates to gratuity" payable to retrenched workmen both in the past and in the future. This is apparent when one turns to the award under head 9(f) in which it is stated by the respondent that the matter has been dealt with in making provision for gratuity for more than 6 years" service, So far as the award under 3(a) is concerned therefore, although it awards gratuity after a service of 5 years, that is fully within the scope; of the demand under head 9(f) which is a demand for gratuity for services starting with a minimum service of six months. That portion of the award is, therefore, in my opinion, perfectly within the jurisdiction of the respondent.

6. With regard to the grant of gratuity, another question has been raised by the petitioners and that is that the workers had been in the service of the petitioners only from 1 January, 1945, and the period during which they were in the service of the petitioner"s predecessors, Messrs. F.M. Chinoy and Co. Ltd., ought not to have in law been taken into account in determining the gratuity payable to the workers. That contention is, in my opinion, not well founded. An employer cannot deprive his employees of the benefits that have accrued to them by reason of past services merely by transferring his business to another person or to another limited company. The work done by the employees primarily benefit the concern, although, of course, the owner also receives benefits therefrom. In any case, therefore where there is a continuity of service, a new employer is bound to take into account the services rendered by the workers "to his predecessors in title, and it was open to the respondent to award that, for the purposes of calculating gratuity, service rendered to the former employers should also be taken into account. My attention has been drawn to an award in respect of provident fund of the Imperial Chemical Industries (India) Ltd. dated 6 November, 1917, published in the Bombay Government Gazette on 19 November, 1947, at page 4375 in Part I. In that award Sir H.V. Divatia came to the conclusion that the services of the workmen were terminated before Imperial Chemical Industries (India) Ltd. took over the concern and there was no continuity of service. On this

ground he held that the period during which the workers were in service prior to the time when Imperial Chemical Industries (India) Ltd. took over the concern should not be taken into account. It is not necessary for my present purpose to consider whether that decision was correct, but even assuming that it was, that was a case in which on the facts the tribunal came to the conclusion that there was no continuity of service, and it has no application to the present case where the respondent has, in my opinion, rightly come to the conclusion that there was continuity of service. This objection of the petitioners to the award, therefore, fails.

7. The result, therefore, is that to the extent of sub-para (1) of the award relating to the demand under the sixth head, the award is without jurisdiction and to that extent the rule is made absolute and the award is set aside. No order as to the costs of the petition.