

PETITIONER:
CLERKS OF CALCUTTA TRAMWAYS

Vs.

RESPONDENT:
CALCUTTA TRAMWAYS CO. LTD.

DATE OF JUDGMENT:
11/10/1956

BENCH:
MENON, P. GOVINDA
BENCH:
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BHAGWATI, NATWARLAL H.
AIYYAR, T.L. VENKATARAMA
DAS, S.K.

CITATION:
1957 AIR 78 1956 SCR 772

ACT:
Industrial dispute-Dearness allowance-Clerks-Middle class employees-Whether uniform rates to be adopted-Decisions of Tribunals-Power of the Supreme Court to interfere.

HEADNOTE:
It is well settled that the decisions of a Tribunal on questions of fact are final and that the Supreme Court would interfere only in cases where (1) the Tribunal acts in excess of the jurisdiction conferred upon it under the statute or regulation creating it or where it ostensibly fails to exercise a patent jurisdiction; (2) there is an error apparent on the face of the decision; (3) the Tribunal has erroneously applied well-accepted principles of jurisprudence.

The Bengal Chamber of Commerce of which the respondent Company was a member, had made an investigation into the cost of living index for the middle class families and, fixed the dearness allowance payable to the employees of the mercantile firms in Calcutta. Before the Industrial Tribunal as well as the Labour Appellate Tribunal the claim was put forward on behalf of the appellants (the clerks of the respondent Company) that the dearness allowance for them should be at the same rates as those decided upon by the Bengal Chamber of Commerce in respect of the middle classes to which the appellants belonged and they contended that the procedure adopted by the Labour, Appellate Tribunal leaving out 20 points of the living cost index un-neutralised was not justifiable.

Held, that in matters of the grant of dearness allowance there cannot be a hard and fast rule applicable to all kinds of employees and except in the very lowest class of manual labourers it is not proper to neutralise the entire rise in the cost of living by dearness allowance. There are different grades among the middle classes and the appellants cannot claim to have the same rates of dearness allowance as those fixed for the clerks of the mercantile firms by the Bengal Chamber of Commerce.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 105 of 1954.
Appeal by special leave from the judgment and order dated November 6, 1952, of the Labour Appellate Tribunal, Calcutta in Appeal No. Cal-3 of 1952

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arising out of the award dated September 25, 1951, of the Court of District Judge, Industrial Tribunal, Calcutta in Case No. VIII-23 of 1951.

S. C. Isaacs, A. K. Datt and Sukumar Ghose, for the appellants.

M. C. Setalvad, Attorney-General for India, D. B. Das and S. N. Mukherji, for the respondent.

B. Sen and P. K. Bose, for Intervener (State of West Bengal).

1956. October 11. The Judgment of the Court was delivered by

GOVINDA MENON J.-This appeal is by special leave against the decision of the Labour Appellate Tribunal of India, Calcutta, which modified the award, passed by the Industrial Tribunal, Calcutta, in the matter of a dispute referred to it by the Government of West Bengal, for adjudication with regard to the rates of dearness allowance for clerks and Depot cashiers, employed by the Calcutta Tramway's Coy. Ltd., numbering about 600, out of a total of 10,000 workmen. Disputes having arisen between the workmen of the Calcutta Tramways Coy, Ltd. (which may hereafter be called 'The Company') on the one hand, and the employers on the other, relating to the dearness allowance payable to the workmen, there were two previous awards, one dated May 16, 1947, by Sri S. N. Guha Roy, and the other dated October 27, 1948, by Sri P. K. Sircar. Both of these awards related to all the employees of the Company and not to the clerks and Depot cashiers alone. Subsequently a reference was made by the West Bengal Government on June 13, 1951, concerning a dispute relating to the dearness allowance of the workmen of the Company, excluding clerks and Depot cashiers. There was an award and an appeal, and in that appeal the Appellate Tribunal increased the dearness allowance by Rs. 7/8/- for workmen in the pay ranges below Rs. 50 and up to the pay range of Rs. 250 and by a flat rate

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of Rs. 5 in the higher pay ranges taking the cost of living index of the workmen class at 370 points.

In the present award, which relates to the clerks and the Depot cashiers alone, the Industrial Tribunal gave Rs. 47/8/- as dearness allowance for a pay range of Rs. 51 to Rs. 100 and provided for a progressive increase of Rs. 5 for each slab of Rs. 50 in the pay range. The Appellate Tribunal increased the amounts so awarded by Rs. 2/8/- more than what was granted to the other workmen of the Company. The cost of living index for the middle class families had been fixed by an investigating body of the Bengal Chamber of Commerce during the relevant year at 382 points, whereas the index in the case of working class was fixed at 370 points. The increased amount awarded for the various pay ranges and shown in the decision of the Labour Appellate Tribunal which need not be repeated again, was founded on these cost of living indices though the amount was not the same as recommended by the Bengal Chamber of Commerce.

Before the Labour Appellate Tribunal, as well as the Industrial Tribunal, the claim put forward on behalf of the clerks and Depot cashiers was that the dearness allowance

should be on the same rates as decided upon by the Bengal Chamber of Commerce of which the company is a member and no difference should have been made between the dearness allowance recommended by the Bengal Chamber of Commerce and that to be awarded by the Industrial Tribunal. In fact, what was urged was that the recommendation of the Bengal Chamber of Commerce ought to have been accepted in its entirety for the reason not only that the Company is a first class member of the Chamber but also that the class of persons, namely the middle classes for whom the recommendation was intended, includes clerks and Depot cashiers of the Company as well, and the same having been accepted, by the Mercantile Tribunal which dealt with the dearness allowance payable to the employees of the mercantile firms in Calcutta, the Industrial Tribunal, as well as the, Labour Appellate Tribunal, should have

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followed the same. The learned Judges of the Appellate Tribunal held that those recommendations were made to the mercantile firms where the workmen consist practically of the clerical and subordinate staff as -opposed to Tramways Company where the large percentage of workmen belong to other categories, the clerks and Depot cashiers being only a small minority, though they found that the cost of living index found by the Bengal Chamber of Commerce should be accepted as the criterion for awarding the increased dearness allowance in the case of the employees of the Company as well.

On behalf of the appellants it is urged before us that a different mode of treatment than the one recommended by the Bengal Chamber of Commerce should not have been resorted to in the case of the appellants, for the reason that those recommendations are intrinsically reasonable, considering the uniformity of life and modes of habit of the middle classes to which the clerks and Depot cashiers belong. The, respondent Company being a member of the Bengal Chamber of Commerce should, instead of ignoring the recommendation have acted upon it as a mandate, so that its action as a member should not be inconsistent with that followed by others especially since there have been no valid reasons alleged for the non-acceptance of the recommendation. It is further urged that there is no acceptable defence put forward that the abovementioned recommendation will not apply to institutions having a mixed staff as the Company in question. On the other hand, what is stated in the written statement of the Company is that according to the previous award it had been paying a uniform sliding scale of dearness allowance for all categories of workmen as detailed in Paragraph 6(b). It is, therefore, contended that what the Industrial as well as the Appellate Tribunal should have done was to have evolved a principle to fix the dearness allowance in relation to the' basic salaries and the cost of living index, as that alone would satisfy the recommendations of the Bengal Chamber of Commerce.

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,We have, therefore, to see whether in following the course now adopted by the Tribunals below they have ignored any legal principle or acted in violation of any statute. There can be no doubt whatever that if the scheme adumbrated by the Bengal Chamber of Commerce is adopted in the case of clerks and Depot cashiers, they would get amounts far in excess and out of all proportion to what were awarded to the other workmen whose appeal had already been disposed of by the Appellate Tribunal though it has to be recognized that the cost of living index in the case of the appellants has

to be considered to be more than the index of workmen whose avocations are the result of physical labour rather than of mental faculties. In short, the clerks and Depot cashiers should be considered as the white collared fraternity.

In these circumstances, we have to find out whether the procedure followed by the Labour Appellate Tribunal, namely leaving out 20 points un-neutralised and allowing Rs. 5 per 20 points rise in the living cost index but taking into consideration a higher living cost index of 382 in the case of the appellants as compared with the average index of the workmen of 370, is a justifiable method to be adopted.

It is difficult to hold that the middle classes in this country can be said to form a separate stratum of society even in a city like Calcutta having the same mode of life, the same necessities, uniform requirements and comforts. There are different grades even among the middle classes and it is unwise to predicate the same degrees of comforts and necessities for everyone who is said to belong to the middle classes. Such being the case, to say that the clerks in the mercantile firms can be considered equal in all respects to the 600 clerks and Depot cashiers of the Company, is an argument which cannot be accepted as sound. The Labour Appellate Tribunal has not completely ignored the recommendations of the Bengal Chamber of Commerce, for it is seen that in raising the amount awarded by the Industrial

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Tribunal the Appellate Tribunal has based its conclusion on the higher cost of living index in the case of middle class employees.

Such being the case, the point for consideration is whether any question of principle is involved, so that this court might interfere with the conclusions arrived at by the Labour Appellate Tribunal. Wide and undefinable with exactitude as the powers of the Court are (see *Dhakeswari Cotton Mills Ltd. v. Commissioner of Income Tax, West Bengal*(1)), it is now well settled that generally the necessary pre-requisites for this court's interference to set right decisions arrived at by Tribunals whose conclusions on questions of fact are final can be classified under the following categories, namely, (1) where the Tribunal acts in excess of the jurisdiction conferred upon it under the statute or regulation creating it or where it ostensibly fails to exercise a patent jurisdiction; (ii) where there is an apparent error on the face of the decision and (iii) where the Tribunal has erroneously applied well-accepted principles of jurisprudence. It is only when errors of this nature exist, that interference is called for. In the present case the appellants have not been able to show that there is any deviation from those principles. If the Tribunal below had failed to-resort to a basic principle, then something might have been said but what has been done is, that in computing the dearness allowance it has considered various methods and adopted one of them. That being the case, it is difficult to say that there is any question of principle at all.

The report of the Central Pay Commission at page 46, in Paragraph 71, made the following recommendation:

"Without adopting such a complicated procedure, we think it sufficient to provide by slabs for persons on different levels of pay, as shown in the accompanying table which also provides for diminishing rates of dearness allowance as the cost of living index falls, taking the stages by 20 points at a time".

(1) [1955] 1 S.C.R. 941, 949.

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It refrained from recommending the neutralisation of the entire higher cost of living by means of dearness allowance. The report of the Committee on Fair Wages appointed by the Government of India in Chapter IV, dealing with Wage Adjustments considered in paragraph 43 the various modes and methods of granting relief to meet the burden of increased cost of living and came to the conclusion that there is no practice of uniformity in the extent of compensation given to employees to meet the increased cost of living. It observed as follows:-

"The Pay Commission has accepted, the principle that the lowest paid employee should be reimbursed to the full extent of the rise in the cost of living and that, higher categories of employees should receive a diminishing but graduated scale of dearness allowance. The Pay Commission has rejected the principal of a flat rate for all categories of employees, irrespective of their basic salaries".

Finally it came to the conclusion "that for the lowest categories of employees the target should obviously be compensation to the extent of 100 per cent. of the increase in the cost of living. For categories above the lowest we agree that the same consideration will not apply. A flat rate equal to the rate allowed to the leastskilled worker is not likely to satisfy higher categories".

In the analysis regarding the Industrial Awards, issued by the Government of India, Ministry of Labour, the question of dearness allowance is considered somewhat elaborately. At page 33 there is a discussion regarding the linking of dearness allowance to the cost of index numbers and as to whether a flat rate of dearness allowance irrespective of the income group should be allowed or not. They further considered the linking of dearness allowance to the cost of living index numbers on the scale of income groups, but at rates diminishing with the income received. A perusal of the fairly elaborate discussion in Chapter 779

III shows that there cannot be a hard and fast rule applicable to all kinds of employees. Very much will depend upon the conditions of labour, the nature of the locality and the mode of living.

In *Buckingham and Carnatic Company Ltd., Madras v. Workers of the Company*(1) the Tribunal considered the question of neutralisation of the rise of the cost of living by the grant of dearness allowance and was of the opinion that cent per cent neutralisation cannot be allowed, as it would lead to a vicious circle and add fillip to the inflatory spiral. It further held that there was no reason why the Industrial worker should not make sacrifices line all other citizens. We can now take it as settled that in matters of the grant of dearness allowance except to the very lowest class of manual labourers whose income is just sufficient to keep body and soul together, it is impolitic and unwise to neutralise the entire rise in the cost of living by dearness allowance. More so in the case of the middle classes.

The criterion to be adopted in the fixation of dearness allowance is also considered in *Mahomad Rai Akbarali Khan v. The Associated Cement Companies Limited*(2) where similar principles are discussed.

On behalf of the appellants our attention was invited to certain observations contained in *The Millowners' Association, Bombay v. The Rashtriya Mill Mazdoor Sangh*(3), but we do not think that any different principle is enunciated there at all. Mr. Isaacs, the learned counsel for the appellants, laid great stress on the decision in *Workmen of the Firestone Tyre and Rubber Company of India*

Ltd., Bombay v. Firestone Tyre and Rubber Company of India Ltd., Bomba(4) where the Tribunal expressed the opinion that dearness allowance is intended to neutralise rise in the cost of living and as there is a well recognised difference between the clerical staff and other workmen in their cost of living, the latter are not entitled.

(1) [1952] L.A.C. 490, 519, 520. (2) [1953] L A.C. 677.

(3) [1955] L.A.C. 371. (4) [1953] L.A.C. 509.

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to claim the allowance on-the same basis. From this the learned counsel contends that the recommendations of the Bengal Chamber of Commerce should be accepted in toto. In our opinion, the decision does not help the point of view put forward on behalf of the appellants. In fact, the Labour Appellate Tribunal has made a distinction between the physical labourers and the clerks and Depot cashiers in whose work it is not alone the physical exertion that is essential but some kind of mental and brain work as well and accordingly the higher cost of living index taken into account.

In such circumstances, it seems to us that the Labour Appellate Tribunal has, after considering the various points of view, come to the correct conclusion in awarding the dearness allowance it did. There is no question of -law or principle involved and the appeal has to be dismissed with costs of the Calcutta Tramways Coy. Ltd.

The State of West Bengal, which has intervened during the appeal, will bear its own costs.

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