

PETITIONER:
MANAGEMENT, GHAZIABAD ENGINEERING CO (P) LTD.

Vs.

RESPONDENT:
ITS WORKMEN

DATE OF JUDGMENT:
18/07/1969

BENCH:
SHAH, J.C.
BENCH:
SHAH, J.C.
MITTER, G.K.

CITATION:
1970 AIR 390 1970 SCR (1) 622
1969 SCC (2) 319
CITATOR INFO :
D 1972 SC 343 (25)
E&R 1977 SC 941 (21)

ACT:
Industrial Dispute--Gratuity--Scheme framed relating
gratuity to consolidated wage not to basic wage--Principles
governing framing of scheme--Dearness allowance at flat
rate--Practice--Courts jurisdiction under Art.
136--Interference with findings of Tribunal.

HEADNOTE:

The Industrial Tribunal on a reference of the disputes between the appellant company and its workmen framed a gratuity scheme. The gratuity payable to a workman on termination of employment was to be computed on the total wage packet of the workman including dearness allowance which he had last drawn. The tribunal also awarded dearness allowance at a flat uniform rate for every 10 point rise in the cost of Consumer Price Index. The Tribunal found that the financial position of the company was sound and it had the capacity to bear the additional burden. In appeal, this Court

HELD: (i) The usual pattern in fixing gratuity is to relate it to the basic wage or salary and not to consolidated wage. A departure may be made from the normal rule, if there be some strong evidence or precedent in the industry, or conduct of the employer or other exceptional circumstances to justify that course. In the absence of such evidence, gratuity should be related to the basic wage and not to the consolidated wage packet. [627 D]

In the present case it was found that the financial position of the company was sound but there was no evidence that the company was "making abnormally high profits", nor was there any evidence that in its sister concern or in other engineering concerns in the region there was a practice of awarding gratuity related to consolidated wages.

M/s. British Paints (India) Ltd. v. Its Workmen, [1966] 2 S.C.R. 523, May & Baker (India.) Ltd. v. Their Workmen, [1961] II L.L.J. 94, British India Corporation v. The Workmen, (1965) Vol. 10 Factory Law Reports 244, Hindustan Antibiotics Ltd. v. Their Workmen, [1967] I.

L.L.J 114, The Remington Rand of India Ltd. v. The Workmen, [1968] 1 S.C.R. 164, and Delhi Cloth & General Mills Co. Ltd. v. The Workmen & Ors. [1969] 2 S.C.R. 307, referred to.

(ii) The rise in dearness allowance was not related to the quantum of basic wage or consolidated wage; it was a flat uniform rate applicable to every workman. Therefore, the rise would not operate to give the workman, besides the additional dearness allowance, a percentage increase in dearness allowance already paid as part of the consolidated wage. [625 E-F]

(iii) The Tribunal, on appreciation of evidence found that the financial position of the company was sound. Assuming that the Tribunal was governed by the strict rules prescribed by the Evidence Act, Sitting in appeal with Special Leave this Court would not be justified in interfering

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with the finding of the Tribunal even if it be open to the criticism that a part of the evidence relied upon was not in law relevant. [624 F]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1408 of 1966.

Appeal by special leave from the Award dated May 19, 1965 February 23, 1966 of the Addl. Industrial Tribunal, Delhi in Industrial Dispute No. 109 of 1965.

H.R. Gokhale, G.L. Sanghi and K.P. Gupta for the appellant.

Urmila Kapur and Bhajan Ramrakhiani, for the respondents.

The Judgment of the Court was delivered by

Shah, J. By order February 24, 1965 the Chief Commissioner of Delhi referred for adjudication, industrial disputes between the appellant company and its workmen relating to dearness allowance and introduction of a scheme of gratuity for the benefit of the workmen. The Industrial Tribunal, Delhi framed the following "gratuity scheme":

(1) On death or retirement on superannuation or on becoming mentally or physically unfit for further service.

One months wages for each Year of service of part there of in excess of six subject to a maximum of 15 months's wages, In case of death of Employee the gratuity shall be payable to his nominee or if there is no nominee to his legal heirs

(2) On termination after five years' service for any cause whatsoever except by way of retrenchment or resignation subject

15 days for each year of service or part there of in excess of six months subject to a maximum of 15 months wages

(3) On resignation after 10 years of service.

15 days wages for each year of service or part thereof in excess of six months

to a maximum of 15 months

wages

Provided that if termination is for any misconduct causing financial loss to the company, the amount of loss shall be deducted from the gratuity payable. The word 'wages' in this Scheme shall mean the total pay packet of

the workman including dearness which he was last drawing."

The Tribunal also directed that "all workmen who were appointed in 1960 or earlier should get dearness allowance at Rs. 3 for every ten point rise in the cost of Consumer Price Index base 1960 over and above their existing wages with effect from

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1st January, 1965. In case of workmen appointed after 1960, the consumer price index base 1960 on the date of his appointment shall be found out and he shall be given Rs. 3 as dearness for every ten point rise in cost of Consumer Price index base 1960 above it with effect from 1st January, 1965 or such later date on which the limit of 10 point rise in cost of Consumer Price Index base is crossed." The Tribunal also directed that dearness allowance will not be enhanced till the limit of ten points be "crossed", and that dearness allowance once granted will not be reduced till the Consumer Price Index falls by more than 10 points. The Company has appealed to this Court with special leave.

In the view of the Tribunal, the financial position of the company "is very sound" and that it has "financial capacity and, stability to bear the additional burden of dearness allowance and of the gratuity scheme." In reaching that conclusion the Tribunal relied upon a news item published in the newspapers that 2000 Russian Tractors were being immediately imported by the Company even though the agency of the Company was being terminated. In relying upon newspaper reports the Tribunal may have erred. But the conclusion of the Tribunal is rounded upon a review of several other circumstances. It is true that one of the primary lines of business of the company was of selling tractors as agents of Russian manufacturers. That agency was in danger of being terminated because the State Trading Corporation had arranged to take over the agency. But the balance sheets of the company show that the agency was only one of the many lines of business and the closure of the agency of the tractor manufacturers was not likely to affect the financial structure of the Company seriously. The Tribunal has on appreciation of evidence come to the conclusion that the financial position of the company was sound and assuming that the Tribunal is governed by the strict rules prescribed by the Evidence Act, sitting in appeal with special leave we will not be justified in interfering with the finding of the Tribunal even if it be open to the criticism that a part of the evidence relied upon is not in law relevant.

The company had on its roll 244 workmen out of whom 118 entered employment after 1960. The company has been paying to its workmen wages consisting of two components-basic wages and 50 per cent of the basic wages as dearness allowance. Payment of wages is made in this form to all workmen whether their employment commenced before the year 1960 or thereafter. It is true that before 1960 the company used to make a consolidated payment without specifying any amount of basic salary or dearness allowance. Since 1960 in every appointment letter it was expressly recited that the employee v,iii get a consolidated salary consisting of 2/3rd of the consolidated salary as basic wages and

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the balance as dearness allowance. The company has produced before the Tribunal 118 such letters of appointment in respect of all employees employed after the year 1960. In respect of the employees appointed prior to the year 1960 in the salary register basic salary and dearness allowance was separately entered though at the time of appointment of

employees there was no allocation as basic wages and dearness allowance.

There is no dispute that since the year 1960 there has been a rise in the cost of living. The Consumer Price Index for Industrial Workers which was 100 in 1960, had risen to more than 130 in 1965. The management of the company granted dearness allowance to employees in other concerns under its management even though those other concerns were not financially very sound. No serious argument has been advanced before us that the rise in dearness allowance is not justified. The only ground of complaint is that by relating the dearness allowance to the total wage packet the workmen are given a rise both in the dearness allowance and in the basic wage.

The Tribunal has awarded dearness allowance at the flat rate of Rs. 3 for every 10 point rise in the cost of Consumer Price Index. The rise is not related to the quantum of basic wage or consolidated wage. It is a flat uniform rate applicable to every workman. The Tribunal was of the view that the allocation between the basic wage and the dearness allowance was "not fair", but for the purpose of the present reference, the question is academic because dearness allowance is not related to the quantum of salary that the workmen receive. The argument that the rise will operate to give to the workmen besides the additional dearness allowance, a percentage increase in dearness allowance already paid as part of the consolidated wage cannot be accepted. We do not therefore see any reason to interfere with the order passed by "the Tribunal with regard to the dearness allowance at the rate of Rs. 3 for every 10 point rise in the Consumer Price Index."

Gratuity payable to a workman on termination of employment is to be computed on the total wage packet of the workman including dearness allowance which he has last drawn. This order makes a departure from the normal rule which is adopted in industrial awards. In *M/s. British Paints (India) Ltd. v. Its Workmen(1)* this Court while introducing a gratuity scheme for the first time in the concern directed that the amount of gratuity shall be related to the basic wage or salary and not to the consolidated wage including dearness allowance. A similar order was made in *May and Baker (India) Ltd. v. Their Workmen(2)*. It is true

(1) [1966] 2 S.C.R. 523. (2) [1961] II L.L.
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that in *British India Corporation v. The Workmen(1)*, an award made by the Tribunal fixing the quantum of gratuity on gross salary i.e., basic wage plus dearness allowance was upheld by this Court. The Court affirmed that the usual pattern in fixing the gratuity is to relate it to the basic wage, but refused to interfere with the order because the practice in that concern was to fix gratuity on the consolidated wage.

Similarly in *Hindustan Antibiotics Ltd v. their work men(2)*, the Tribunal directed the employer to pay gratuity at the rate of one half of wages for each month including dearness allowance but excluding house rent and all other allowances for each completed year of service subject to a maximum of wages for ten months. In rejecting the claim of the employers for relating gratuity to the basic wage, this Court observed:

"If the industry is a flourishing one, we do not see any reason why the labour shall not have the benefit of both the schemes i.e. the employees provident fund and the gratuity

scheme. Gratuity is an additional form of relief for the workmen to fall back upon. If the industry can bear the burden, there is no reason why he shall not be entitled to both the retirement benefits. The Tribunal considered all the relevant circumstances: the stability of the concern, the profits made by it in the past, its future prospects and its capacity and came to the conclusion that, in the concern in question, the labour should be provided with a gratuity scheme in addition to that of a provident fund scheme. There was no justification to disturb this conclusion."

In *The Remington Rand of India Ltd. v. The Workmen* (8) this Court declined to interfere with the order of the Tribunal awarding gratuity related to the consolidated wage including dearness allowance "in view of the flourishing nature of the concern, the enormous profits it was making, the reserves it had built up as also in view of the fact that it was paying gratuity to executives on the basis of consolidated wages." In *The Delhi Cloth & General Mills Co., Ltd. v. The Workmen & Ors.* (4) this Court had to consider whether gratuity payable to workmen in the textile industry in the Delhi region should be related to the consolidated wage. After referring to the decisions which were brought to the notice of the Court, it was observed that:

"It is not easy to extract any principle from these cases: as precedents they are conflicting The

(1) (1965) Vol. 10 Factory Law Report, 244.

(2) [1967] I L.L.J. 114.

(3) [1968] 1 S.C.R. 164.

(4) [1969] 2 S.C.R. 307.

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Tribunal has failed to take into account the prevailing pattern in the textile industry all over the country It is a countrywide industry: and in that industry, except in one case to be presently noticed, gratuity has never been granted on the basis of consolidated wages."

The Court after referring to the schemes framed in respect of the industries in Bombay and Ahmedabad and other industries concluded that "determination of gratuity is not based on any definite rules. In each case it must depend upon the prosperity of the concern, needs of the workmen and the prevailing economic conditions examined in the light of the auxiliary benefits which the workmen may get on determination of employment."

There is no clear evidence on the record, and no precedents have been brought to our notice, to justify a departure from the normal rule that the quantum of gratuity is related not to the consolidated wage packet but to the basic wage. A departure may be made from the normal rule, if there be some strong evidence or precedent in the industry, or conduct of the employer or other exceptional circumstances to justify that course. In the absence of such evidence, we are of the view that gratuity should be related to the basic wage and not to the consolidated wage packet. In the present case it is found that the financial position of the Company is sound but there is no evidence that the company is "making abnormally high profits" nor is there any evidence that in its sister concerns or in other engineering concerns in the region there is a practice of

awarding gratuity related to consolidated wages.

It was urged on behalf of the company that even though the workmen had, in the claim made by them, demanded a scheme of . gratuity benefit at the rate of 15 days wages for each year of service in case of death or retirement on attaining the age of superannuation or on becoming mentally or physically unfit for further service,. the Tribunal had awarded gratuity at the rate of one month's wages for each year of service subject to a maximum of 15 months' wages. But the claim was made on the footing that the wages were to include dearness allowance. When the claim is not accepted, we cannot hold the workmen bound by the multiples.

We make no modification in clause (1) of the scheme. We modify the scheme in so far as it relates to the dearness allowance and direct that for the last sentence of the gratuity scheme the following shall be substituted:

"The word 'wages' in the scheme shall mean basic salary or emoluments excluding dearness allowance and

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other allowances and benefits payable to the workman which he had last drawn."

Subject to the above modification, the appeal fails and is dismissed. There will be no order as to costs in the appeal.

Y.P.

Scheme modified and appeal dismissed.

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