Remington Rand Of India Ltd vs The Workmen on 17 October, 1969

Equivalent citations: 1970 AIR 1421, 1970 SCR (2) 935, AIR 1970 SUPREME COURT 1421, 1970 LAB. I. C. 1182

Author: C.A. Vaidyialingam

Bench: C.A. Vaidyialingam, J.M. Shelat, I.D. Dua

PETITIONER:
REMINGTON RAND OF INDIA LTD.

Vs.

RESPONDENT:
THE WORKMEN

DATE OF JUDGMENT:
17/10/1969

BENCH:
VAIDYIALINGAM, C.A.
BENCH:
VAIDYIALINGAM, C.A.
SHELAT, J.M.
RAMASWAMY, K.
DUA, I.D.

CITATION:
1970 AIR 1421 1970 SCR (2) 935
1969 SCC (3) 913
CITATOR INFO :
RF 1973 SC2344 (3)

ACT:
Industrial Dispute-Medical, benefit-Company's Scheme for Calcutta employees whether applicable to Madras region-Gratuity-Qualifying period for workmen guilty of misconduct-Whether gratuity should be payable to workmen guilty of violence, riotous behaviour etc.

HEADNOTE:
An industrial dispute between the appellant company and its workmen relating,. inter alia, to bonus, medical benefits anti gratuity was, referred by the State Government of.

Madras on April 6, 1965 to the Industrial Tribunal for adjudication. The. Tribunal awarded bonus at 20,% of the consolidated wages as provided in the Payment of Bonus Act, 1965. As to medical benefit& the Tribunal diverted that the company should pay the- cost of medicines prescribed by the company's doctor and the full cost of hospitalisation when it was. recomanded by the company's doctor. The Tribunal modified, the company'& gratuity scheme in accordance with the workmen's demands. The company appealed to, this Court against the award The question of bonus had to be considered, in, the light of this Courts decision in Japan Trading, Company's law. On the question. of medical benefits the Court had to consider whether the company's scheme for its Calcutta employees could be extended to Madras Region. In regard to gratuity the main questions for consideration were as, to, the qualifying, period for-payment of gratuity to workmen who were guilty of misconduct, and whether gratuity should be payable for workmen whose

misconduct consisted of violence, riotous behaviour etc.

HELD: (i) In View of this Court's decision in Jalian Trading Company's case the.Payment of Bonus Act, 1965 was not applicable in respect of the year in question, and the bonus payable had to be calculated in accordance with, the Full Bench, Formula. The award to that extent therefore had to be set aside and remanded, to the Tribunal for determining the bonus in accordance with the said Formula [937 E]

Jalam Trading Co. v. Mill Mazdoor Union, [1967] 1 SC.R. 15, referred to.

(ii) In the appellant company's earlier cases relating to its Bangalore, Hyderabad and Kerala Branched this Court had held that the Company's Calcutta scheme relating to medical benefit for its workmen was fair and reasonable and had made the said scheme applicable to these areas also. No substantial difference had been shown between these areas and the Madras region affecting the question of medical benefit. These areas and the no legitimate reason why the Calcutta scheme should not be applied to the workmen in the present case. [The Court framed an eight point scheme for medical benefit based on the Calcutta scheme] [939 A-940 C]

Remington Rand of India v. The Workmen, C.A. Nos. 856/68 etc. dt. 10-12-1968, applied.

(iii.) Once the principal, that gratuity is paid to ensure good conduct throughout the period that the workman serves his employer as laid drown

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in Calcutta Insurance Co. some distinction in the matter of the qualifying period between cases of resignation and retirement on the one hand and dismissal for misconduct on the other becomes logically necessary. Such a distinction cannot legitimately be assailed as unreasonable. Similarly if the object underlying the scheme of gratuity is to secure

industrial harmony and satisfaction among workmen it is impossible to equate cases of death, physical incapacity, retirement and resignation with cases of termination of service incurred on account of misconduct. Besides, a longer qualifying period in the latter cases would ensure restraint against wailful use of violence and force, neglect etc. [948 E]

As laid down in Delhi Cloth & General Mills case that acts amounting to misconduct as defined in the standing orders, when they are made, or the model standing orders, where they are applicable differ in degree of gravity, nature and their impact on the discipline and the working of the concern, and that though grave in their nature all of them may not result in loss capable of being calculated in terms of money. Amongst, them there would be some which would forthwith disentitle the workman from retaining his employment and justifying his dismissal.

For the reasons given in the Delhi Cloth & General Mills case it was necessary to modify the scheme of gratuity and to add in cl. 5 thereof a proviso that in cases where there has been termination of service on account of an employee found guilty of act or acts involving violence against the management or other employees or riotous or disorderly behaviour in or near the company's premises, the company would be entitled to forfeit the gratuity which would otherwise be payable to the concerned workmen. Clause 5 should also be modified so as to introduce therein 15 years continuous service as the qualifying period for earning gratuity in cases when the service of an employee has been terminated on account of misconduct and that such gratuity should be payable at the rate prescribed in cl. 3(d) of the scheme. [948 G-949 D]

Calcutta Insurance Co. Ltd. v. Their Workmen, [1967] 2 S.C.R. 596. and Delhi Cloth & General Mills Co. Ltd. v. The Workmen, [1969] 2 S.C.R. 307, applied.

Garment Cleaning Works v. Its Workmen, [1962] 2 S.C.R. 711, Motipur Zamindari (P) Ltd. v. Workmen, [1965] 2 L.L.J. 139, Employees v. Reserve Bank of India, [1966] 1 S.C.R. 25, 58, Remington Rand of India Ltd. v.' Their Workmen, [1968] 1 L.L.J. 542, Remington Rand of India v. The Workmen, [1968] 1 S.C.R. 164, 168 and Indian Oxygen & Acetylene Co Ltd. case [1956] 1 L.L.J. 435, considered.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1551 of 1966. Appeal by special leave from the Award dated February 28, 1966 of the Industrial Tribunal, Madras'in I. D. No. 21 of 1965.

H. R. Gokhale and D. N. Gupta, for the appellant. M. K. Ramamurthi, Shyamala Pappu and vineet Kumar, for the respondents.

The Judgment of the Court was delivered by Shelat, J. On demands for revision of wage-scales, dearness allowance, medical benefit, bonus for the year 1963-64, gratuity etc. having been made by the workmen of the appellant- company in its Madras and the other branches in that region and disputes thereabout having arisen between the company and its said workmen, the Government of Madras referred them by its notification dated April 6, 1965 for adjudication to the Industrial Tribunal, Madras. The Tribunal granted some and rejected the rest of the demands. Aggrieved by the award the company filed this appeal under special leave granted by this Court.

Though the award dealt with a number of demands counsel for the appellant-company restricted its challenge against the award on three subjects only. Consequently, we are, concerned in this appeal with those three subjects only, namely, bonus for the year 1963-64, medical benefits and revision by the Tribunal of the company's existing gratuity scheme.

As regards the bonus, the company had already paid to the workmen bonus at the rate of 4 months' basic pay as against the demand for the maximum bonus calculated in accordance with the Payment of Bonus Act, 1965, and on consolidated as against the basic wages. The Tribunal conceded that demand and granted bonus at 209% of the consolidated wages. In view, however, of this Court's decision in Jalan Trading Co. v. Mill Mazdoor Union,(1) Mr. Ramamurthi for the workman conceded. that the Act cannot apply in respect of the year in question and that the bonus payable for that year will have to be calculated on the basis of the Full Bench Formula as approved by this Court. The award to that extent, therefore, has to be set aside and remanded to the Tribunal for determining the bonus in accordance with the said Formula.

On the question of medical facilities, the workmen's demand is contained in paras 27 to 31 of their statement of claim filed before the Tribunal according to which the workmen wanted the company to reimburse all medical expenses incurred by them on production of bills therefore. In paras 27 and 28 of the statement, it was stated that the company had a scheme for medical benefit for its workmen at Calcutta made under the consent award of 1962 and that there was no reason "why this amenity should be refused to the workmen in this region". Para 30 of the statement stated that there was a discussion between the parties regarding this demand when the company agreed to appoint a medical officer for consultation by the workmen and also to meet the cost of medicines upto Rs. 100 for a workman per year. This offer, however, was rejected on three grounds: (1) that the condition as to the ceiling was discriminatory, (2) that the ceiling was too low and (3) that there was no warrant for not extending the benefit to workmen of the branch offices outside Madras.

(1) [1967] 1 S.C.R. 15.

This demand is dealt with by the Tribunal in para 14 of the award. It is clear therefrom that the union's contention before the Tribunal was that there was no reason why "this amenity of medical facility which the company has granted to its Calcutta workmen should be refused to the workmen of the Madras region". The contention thus clearly was that the company having made a scheme for its Calcutta employees, it was discriminatory to refuse such a scheme to its workmen in Madras region. It is equally clear that the offer made by the company and referred to in the statement of claim by the workmen was rejected as it contained a ceiling which was not in its Calcutta scheme,

and it was, therefore, that its offer was considered discriminatory. In view of these contentions the Tribunal agreed that a scheme for medical benefit for this region was called for. The Calcutta scheme was not produced before the Tribunal and therefore the Tribunal proceeded to frame its own scheme. The Tribunal rejected the demand for reimbursement of all medical expenses in respect of which bills would be produced as it felt that such a provision would lead to abuses including the obtaining of false bills. Instead, the Tribunal directed that the company should pay the cost of such medicines as are prescribed by the company's doctor, if supported by genuine bills, and should also pay all cost of hospitalisation if and when it was recommended by the company's doctor.

Counsel for the company objected to this part of the award on the grounds (1) that the Tribunal was not justified in throwing on the company the entire burden of medical expenses including the cost of hospitalisation even in cases of major diseases which workmen might suffer or contact, (2) that it was no part of the employer's obligation to provide for such expenses and that too to an unlimited degree, and (3) that the award should have provided a ceiling both in respect of the cost of medicines and of hospitalisation. The argument was that the grievance of the workmen was that denial of the medical amenity to them as the one given to its Calcutta workmen was discriminatory, and therefore, if the Tribunal decided to concede the demand, it should have been on the same lines as the Calcutta scheme. Mr. Rama- murthi, on the other hand, contended that (a) it was an accepted principle that though a company may have an all India organisation, it was not necessary that if should have uniform conditions of service in all the regions and that, therefore, merely because the company has a medical scheme for its Calcutta office it did not follow that scheme must also be applied to its workmen in Madras region, and (b) that the scheme framed by the Tribunal was fair and should not be interfered with in order only to bring it in line with that of Calcutta.

In a recent decision concerning this very company and its, workmen in Bangalore, Hyderabad and Kerala branches (Remington Rand of India v. The Workmen)(1), this Court had to consider this very question. The Tribunals in those cases. had, as in this case, made schemes which imposed the burden of medical facilities on the company without any ceiling and extended therein such benefit to the family members of the workmen also. In those cases, on our finding the company's Calcutta scheme to be fair and reasonable, we substituted it for the schemes framed by the, respective Tribunals. The Calcutta scheme is thus in operation in those areas also. Counsel for the workmen has not shown to us any substantial difference between those areas and the Madras region affecting, the question of medical benefit. We,, therefore, find no legitimate reason why the Calcutta scheme should not be applied to these workmen. It is true that medical benefit is excepted in that scheme for certain diseases of a contagious and epidemic nature. That presumably was done on the ground that for such diseases the primary duty to give relief is of the State and not of the employer. For the reasons given in that decision, we set aside the directions given by the Tribunal in this. behalf and substitute them by the following scheme :

> 1. When a workman during the course of his duty requires medical attention, and where such attention is given by the company's doctor (i.e. a doctor or doctors nominated by the company including a doctor nominated as a part-time doctor) and medicines are prescribed by him, the cost of such prescription should be borne by the company;

2. In the event of a workman falling sick at his residence and the illness is other than a venereal disease, leprosy, smallpox, typhoid or cholera, he should be paid the cost of the medicines prescribed;

3. Bills or cash vouchers pertaining to such prescription should be produced for counter signature of the company's doctor before payment is authorised;

4. Disease of a serious nature requiring hospitalisation will be subject to consideration by the company;

5. At the time of employment the company will be entitled to get the prospective employees examined by the company's doctor and their employment will be subject to being found medically fit;

6. All company employees who are presently employed or those employed in future will be medically (1) C.A. Nos. 856. 1475 and 2119 of 1968, decided on December 10, 1968.

examined by the company's doctor once a year or at such other periodical intervals determined by the company but the results of such medical examinations will not be prejudicial to the workmen's employment;

7. In case a workman is found medically unfit to continue in service, the company will decide his case in consultation with the union's secretary; and

8. This scheme will come to an end as and when the Employees' State Insurance Scheme is extended to the employees concerned.

The question of laying down any ceiling need not be con- sidered as the company, we are told, is agreeable to extend this scheme in this region.

The third item in respect of which the company challenges the award is the revision made by the Tribunal of the existing gratuity scheme. The workmen's demand in this respect was : (1) that the maximum limit of 15 months' salary should be enhanced to 20 months' salary, and (2) that the provision in the existing scheme that no gratuity would be payable to a workman dismissed on the ground of misconduct should be substituted by a provision that even in such cases gratuity should be payable but the company would be entitled to deduct from such gratuity amount the amount of financial loss, if any, resulting from such misconduct. The Tribunal's view was that these demands were reasonable and accordingly made modifications in the existing scheme. At first, Mr. Gokhale objected to this part of the award. first ly on the ground that the Tribunal ought not to have allowed gratuity even in cases of dismissal for misconduct, and secondly, that the qualifying period in the case of termination of service by the company otherwise than for misconduct should be 10 years and not the graded periods from 5 to 15 years as provided in the award. On second thoughts he did not press the second objection. and therefore, nothing need be said about it. He, however, contended

that if gratuity even in cases of dismissal for misconduct is to be made payable, a provision should be made that it would be forfeited if the misconduct is a gross one involving violence, riotous behaviour etc. and for the rest of the cases, the qualifying period should be 15 years of continuous service.

These objections involve a principle, and therefore, need serious consideration. The principle invoked by Mr. Gokhale is, firstly, that since gratuity is paid as a reward for long and meritorious service it would be inconsistent with that principle to award gratuity in cases of dismissal for misconduct, for. such cases cannot be treated as cases of meritorious service, and secondly, the provision in such cases for deduction only of financial loss resulting from misconduct committed by the workman is neither proper nor consistent with the principle on which gratuity is made payable by an employer. A workman may be guilty of gross misconduct, such as riotous behaviour or assault on a member of the staff. Such misconduct may not result in any financial loss to the company, and therefore, the workman would be paid full gratuity amount. The contention was that it would be a serious anomaly that while a workman, who has caused some damage to the company's property and is dismissed on the ground that he was guilty of misconduct would have the gratuity amount payable to him reduced to the extent of that damage, another workman, who, for instance, assaults and causes injury, even a serious injury, to another employee would, though liable to be dismissed, be entitled to the full gratuity merely because the misconduct of which he is guilty, though graver in nature, does not result in pecuniary loss to the company. In support of his contention, Mr. Gokhale leaned heavily on two recent decisions of this Court in Calcutta Insurance Co. Ltd. v. Their Workmen(1) and The Delhi Cloth & General Mills Company Ltd. v. The Workmen(2). Relying on these decisions, he urged, that in cases of dismissal for misconduct, the qualifying period should not be as prescribed by the Tribunal but must be 15 years of continuous service. Mr. Ramamurthi, on the other hand, contended that the principle that gratuity is a reward for long and meritorious service and that for a single misconduct after such service, such misconduct should not result in deprivation of gratuity except to the extent of the actual monetary loss caused to the employer has been long accepted in industrial adjudication and should not be abandoned, and that the two decisions relied on by Mr. Gokhale should not be construed as having the cumulative result of enhancing the qualifying period and also depriving gratuity in cases of dismissal for misconduct. The first decision, according to him, lays down an increase in the qualifying period from 10 years, which generally used to be the period for earning gratuity, to 15 years, and the second lays down Certain exceptions to the accepted rule that deduction of monetary loss resulting from misconduct was sufficient. He argued that neither of the two decisions lays down that both the consequences must follow where a workman is dismissed for misconduct, even if such misconduct has not resulted in any monetary loss to the employer. In view of these contentions it becomes necessary for us to examine the earlier decisions cited before us before we come to (1) [1967] 2 S.C.R. 596.

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

the cases of Calcutta Insurance Co. Ltd.(1) and the Delhi Cloth & General Mills Co. Ltd.(2).

The question as, to whether gratuity should be, payable even though the concerned workman is dismissed for misconduct appears to have been raised for the first time is The Garment Cleaning

Works v. Its Workmen(3). The objection there raised related to cl. 4 of the gratuity scheme: framed by the Tribuml which provided that even if a workman was dismissed or discharged for misconduct, gratuity would still be payable except that if such a misconduct resulted in financial loss, to- the works, gratuity should be paid after, deducting such loss. The contention urged by counsel, but which failed,, was that such a clause was, inconsistent with the principle on, which gratuity claims were based, namely, that they were in the nature of retiral benefit based' on. long and meritorious, service. Therefore, if a workman was guilty of misconduct and was dismissed or discharged, it would be a blot on his long and meritorious service and in such a case it would not be open to him to claim gratuity. This was a general argument and was repelled as such is clear from what the Court said at page 715 of the Report :

> "On principle, if gratuity is earned by an employee for long and meritorious service it is, difficult to understand why the benefit thus earned by long and meritorious service should not be available to the employee even though at the end of such service he may have been found guilty of misconduct which entails his dismissal. Grautuity is not paid to the employee gratuitously or merely as a matter of boon. It is paid to him for the service rendered by him to the employer, and when it is once earned it is difficult to understand why it. should neceasarily be denied to him whatever may be, the nature of misconuct for his dismissal-Therefore we do, not. think that it would be possible to accede to the general argument that in all cases where the &mice of an employee is terminated for misconduct gratuity should riot be paid to him."

The words "why it should necessarily be denied to him whatever may be the nature of misconduct occurring in the earlier part of the passage and the words "general argument that in all cases where the service of an employee is terminated for misconduct gratuity should not be paid" and the reference by the Court to certain awards made by tribunals where simple misconduct was distinguished from grave misconduct and forfeiture of gratuity (1)[1967] 2 S.C.R. 596. (2) [1969] 2 S.C.R. 307. (3) [1962] 2 S.C.R. 711.

was provided for the letter occurring after this passage clearly show firstly that the Court was dealing with and repelled the general proposition that without any distinction between simple and gross misconduct there should be forfeiture in all cases of dismissal for misconduct of whatsoever nature, and secondly, that though the Court approved the scheme which provided that gratuity should be paid after deducting financial loss resulting from the workman's misconduct, the Court did not lay down any principle that gratuity should be paid in cases of grave misconduct involving even violence which though it may not result in financial damage may yet be more serious than the one which results in monetary loss. The decision thus is not an authority for the proposition that even if a workman were guilty of misconduct, such as riotous behaviour or an assault on another employee, in- dustrial adjudication should not countenance a provision for forfeiture of gratuity in such cases merely because it does not result in monetary loss or that such a provision would be inconsistent with the principle that gratuity is not a boon or a gratuitous payment but one which is earned for long and meritorious service.

In Motipur Zamindari (P) Ltd. vs. Workmen(1) the only question considered was whether the award was justified in providing forfeiture of gratuity in a case where the misconduct involved moral turpitude. The Court following Garment Cleaning Works (2) directed that instead of forfeiture, the clause should provide deduction of the amount of monetary loss, if any, caused by such misconduct. It is clear that no one canvassed the question as to whether a provision in a gratuity scheme that a workman should forfeit gratuity in the event of his committing misconduct involving violence or riotous behaviour within or around the works premises would be justified or not. Nor was it considered whether it would be anomalous to provide for exaction of compensation from gratuity amount in case of misconduct involving moral turpitude while not making any provi sion against misconduct, such as the use of violence or force, which though not resulting in monetary loss, yet is unquestionably of a graver nature. The case of Employees v. Reserve Bank of India(3) was again a case wherethere was a general clause in the gratuity scheme providing forfeiture in cases of dismissal for misconduct whatsoever and where in view of the decision in Garment Cleaning Works (2)" the Bank conceded to:substitute the rule by providing deduction from gratuity the amount of monetary loss occasioned by the misconduct for which dismissal is ordered. Thus, in none of the cases cited before us the question as to; what should be the minimum qualifying period in cases of dismissal (1) [1965] 2 L.L.J. 139. (2)[1962].2 S.CR.,711. (3) [1966] 1 S.C.R. 25, at 58.

for misconduct and the question as to whether a provision for forfeiture of gratuity in the event of such dismissal having been ordered for misconduct involving violence were either canvassed or considered. On the other hand, in a recent decision between this very company and its workmen in Bangalore region (Remington Rand of India Ltd. v. Their Workmen)(1), the gratuity scheme made by the Tribunal provided for a qualifying period in cases of termination of service otherwise than for misconduct, but no qualifying period was provided for cases where termination of service was by way of punishment for misconduct. This Court accepted the objection of the company on the ground of this omission and laid down the qualifying period of 15 years' service in such cases. In this decision the Court followed the earlier decision in Calcutta Insurance Co.(2) In another such case (Remington Rand of India vs. The Workmen(3), where the dispute concerned the workmen of the company in Kerala region 15 years service was provided as the qualifying period in cases of dismissal for misconduct. In the case of Calcutta Insurance Co.(2) on a contention having been raised that the qualifying period for earning gratuity in cases of retirement and resignation should be 15 years' service and that no gratuity should be payable in cases of dismissal for misconduct, the Court examined the earlier decisions commencing from the Indian Oxygen & Acetylene Co. Ltd.(4) to the case of Garment Cleaning Works(5) 'and registered its demurrer against the observation made in the latter case that as gratuity was earned by an employee for long and meritorious service, it should consequently be available to him even though at the end of such service he may have been found guilty of misconduct entailing his dismissal. In so doing the Court at page 608 of the Report remarked :

> "In principle, it is difficult to concur in the above opinion. Gratuity cannot be put on the same level as wages. We are inclined to think that it is paid to a workman to ensure good conduct throughout the period he serves the employer. "Long and meritorious service"

must mean long and unbroken period of service meritorious to the end. As the period of service must be unbroken, so must the continuity of meritorious service be a condition for entitling the workman to gratuity. if a workman commits such misconduct as causes financial loss to his employer, the employer would under the general law have a right of action against the employee for (1) [19681 1 L.L.J. 542. (2) [1967] 2 S.C.R. 596.

(3) [1968] 1 S.C.R. 164, at 168. (4) (1956] 1 L.L.J. 435.

(5) [1962] 2 S.C.R. 711.

the loss caused and making a provision for withholding payment of gratuity where such loss caused to the employer does not seem to aid to the harmonious employment of laborers or workmen. Further, the misconduct may be such as to undermine the discipline in the workers a case in which it would be extremely difficult to assess the financial loss to the employer."

Continuity, in other words, must govern both the service and its, character of meritoriousness. The Court further observed that a mere provision in a gratuity scheme enabling an employer to, deduct from the gratuity amount the actual loss caused as a. result of misconduct for which the workmen incurs the punishment of dismissal or discharge cannot subserve industrial peace and harmony, firstly, because an employer even without such a. provision has under the law the right of action for claiming damages, a right not taken away by industrial law, and secondly,. because a misconduct resulting in dismissal may be such as may undermine discipline in the workmen, in which case it would be extremely difficult to assess the financial loss. As regards the qualifying period, the Court laid down 10 years service in cases, of resignation or retirement and "following the principles laid down in the former decisions of this Court" provided 15 years' service for qualifying for gratuity in cases of dismissal for mis-conduct. In the case of Delhi Cloth & General Mills Co. Ltd. (1) an objection was raised on behalf of the workmen to cl. 3 of the gratuity scheme framed by the Tribunal. That clause provided as follows :

> "On termination of service on any ground whatsoever except on the ground of misconduct as in cl. 1 (a) and 1 (b) above."

Cl. 1 (a) and 1 (b) provided for payment of gratuity in the eventof the death of an employee while in service or on his being physically and mentally incapacitated for further service and' laid down the rates and the qualifying periods as follows :

> (a) After 5 years continuous service and less than 10 years' service-12 days' wages for each completed year of service
>
> (b) After continuous service of 10 years-15 days' wages for each completed year of service.

The effect of cl. 3, therefore, was that in case of termination of service an employee would be entitled to get gratuity at the above (1) C.A. Nos.2168, 2569 of 1966 and 76, 123 and 560 of 1967, decided on

September 27, 1968.

rates if he had put in service for the aforesaid periods, but would forfeit it if the termination was due to any misonduct committed by him. The objection was that this provision was inconsistent with the decisions so far given by this Court, that according to those decisions the only provision permissible to the Tribunal was to enable Ox employer to deduct actual monetary loss arising from misconduct, and that therefore, the mere fact that a work- man's service was terminated for misconduct was no ground for depriving him altogether of gratuity earned by him as a result of his long and meritorious service, until the date, when he commits such misconduct. In examining, the validity of this contention the Court analysed the previous decisions and pointed out that none of them laid down a general principle, that an industrial tribunal cannot _justifiably provide that an employer need not be made to pay gratuity even where, the workman had incurred termination of service on account of his having committed misconduct, not merely technical but of a grave character. The Court observed that in some decisions this Court, no doubt, had held that the fact that dismissal of a workman on account of his having committed misconduct need not entail forfeiture and that it would be sufficient to forfeit partially the gratuity payable to him to the extent of monetary loss caused to the employer. But then no decision had laid down as a principle that a provision for such forfeiture cannot be justified, however grave the misconduct may be, provided it had not caused monetary loss. The Court noticed that the trend in the earlier decisions was to deny gratuity in all cases where the, workman's service was terminated for misconduct but that in later years in cases such as the Garment Cleaning Works(1) "a less rigid approach" was adopted. The Court then observed:

> "A bare perusal of the Schedule (Model Standing Orders) shows that the expression "misconduct' covers a large area of human conduct. On the one hand arc the habitual late attendance, habitual negligence and neglect of work on the other hand are riotous or disorderly behaviour during working hours at the establishment or any act subversive of discipline, wilful insubordination or disobedience. Misconduct falling under several of these latter heads of misconduct may involve no direct loss or damage to the employer, but would render the functioning of the establishment impossible or extremely hazardous. For instance, assault on the manager of an establishment may not directly involve the, employer in any loss or damage, which could be equated in terms of money, but it would render the working of the establishment impossible. One may also (1) [1962] 2 S.C.R. 711.

envisage several acts of misconduct not directly involving the establishment in any loss, but which are destructive of discipline and cannot be tolerated. In none of the cases cited any detailed examination of what mis- conduct would or would not involve to the employer loss capable of being compensated in terms of money was made. It was broadly stated in the cases which have come before this Court that notwithstanding dismissal for misconduct a workman will be entitled to gratuity after deducting the loss occasioned to the employer. If the cases cited do not enunciate any broad principle we think that in the application of those cases as precedents a distinction should be made between technical misconduct which leaves no trail of.

indiscipline, misconduct resulting in damage to the employer's property, which may be compensated by forfeiture of gratuity or part thereof, and serious misconduct which though not directly causing damage,, such as acts of violence against the management or other employees or riotous or disorderly behaviour, in or near the place of employment is conducive to grave indiscipline. The first should involve no forfeiture: the second may involve forfeiture of an amount equal to the loss directly suffered by the employer in consequence of the misconduct and the third may entail forfeiture of gratuity due to the workmen. The precedents of this Court, e.g., Wenger & Co. v. Its Workmen [1963(2) L.L.J. 388], Remington Rand of India Ltd.'s case [1968(1) L.L.J. 542] and Motipur Zamindari (P) Ltd.'s case [1965(2) L.L.J. 139] do not compel us to hold that no misconduct however grave may be visited with forfeiture of gratuity. In our _judgment, the rule set out by this Court in Wenger & Co.'s case and Motipur Zamindari (P) Ltd.'s case applies only to those cases where there has be-en by actions wailful or negligent any loss occasioned to the property of the employer and the miscon- duct does not involve acts of violence against the management or other employees, or riotous or disorderly behaviour in or near the place of employment. In these exceptional cases-the third class of cases the employer may exercise the right to forfeit gratuity; to hold otherwise would be to put a premium upon con-

> duct destructive of maintenance of discipline."

In this view, the Court modified cl. 3 of the scheme by adding an explanation, the effect of which was that though the employer could not deprive the workman of the gratuity in all cases of misconduct, he could do so where it consisted of acts involving violence against the management or other 'employees or riotous 5Sup.Cl/70-15 or disorderly behaviour in or near the place of employment and also gave right to the employer to deduct from gratuity such amount of loss as is occasioned by the workman's misconduct. We may mention that the Court did not alter the qualifying period in cases of misconduct since no objection appears to have been raised on that ground. As against the contention that a provision in accordance with these two decisions should be introduced in the scheme under examination, Mr. Ramamurthi submitted that the two decisions should not be construed as if they laid down principles which should have the cumulative effect, firstly, as to the qualifying period, and secondly, as to deprivation of gratuity in cases specified in the Delhi Cloth & General Mills case(1). It is true that this decision does not lay down that the qualifying period in cases of misconduct should be 15 years as was held in Calcutta Insurance Company(2). But, as aforesaid, that was because that ques- tion was not raised, while in the Calcutta Insurance Co. case(2) it was expressly raised and the Court laid down that in such cases it would be proper to provide 15 years continuous service as a criterion.

Once the principle that gratuity is paid to ensure good con- duct throughout the period that the workman serves his employer is accepted as laid down in Calcutta Insurance Co.(2) some distinction in the matter of the qualifying period between cases of resignation and retirement on the one hand and dismissal for misconduct on the other becomes logically necessary. Such a distinction cannot legitimately be assailed as unreasonable. Similarly, if the object underlying schemes of gratuity is to secure industrial harmony and satisfaction among workmen it is impossible to equate cases of death, physical incapacity, retirement and resignation with cases of termination of service incurred on account of misconduct. Besides, a longer qualifying period in the latter cases would ensure

restraint against wailful use of violence and force neglect etc. No serious argument was advanced that such a distinction would not be reasonable. The objection was against the insertion of both and not against the merit of such distinction. As regards the clause as to misconduct, it is not possible to disagree with the proposition laid down in the Delhi Cloth & General Mills case(-) that acts amounting to misconduct as defined in the standing orders, where they are made, or the model standing orders, where they are applicable, differ in degree of (1) 11969] 2 S.C.R. 307.

(2) (19671 2 S.C.R. 596.

gravity, nature and their impact on the discipline and the working of the concern, and that though grave in their nature and results, all of them may not result in loss capable of being calculated in terms of money. Amongst them there would be some which would forthwith disentitle the workman from retaining his employment and justifying his dismissal. For the reasons given in the Delhi Cloth & General Mills' case(1) with which we, with respect, concur, we must agree with counsel for the company that it is necessary to modify the scheme and to add in cl. 5 thereof a proviso that in cases where there has been termination of service on account of an employee found guilty of act or acts involving violence against the management or other employees or riotous or disorderly behaviour in or near the company's premises, the company would be entitled to forfeit the gratuity which would otherwise be payable to the concerned workman. Cl. 5 should also be modified so as to introduce therein 15 years continuous service as the qualifying period for earning gratuity in cases where the service of the employee has been terminated on account of misconduct and that such gratuity should be payable at the rate prescribed in cl. 3(d) of the scheme.

The appeal is allowed and the award is set aside to the extent aforesaid. The gratuity scheme and the scheme for medical benefit, as revised by the Tribunal, are modified as stated above. So far as the question of hours is concerned, that question is remanded to the Tribunal to decide it in accordance with the observations made hereinabove. The Tribunal will give liberty to the parties to adduce for that purpose such further evidence as they think necessary. There will be no order as to costs.

Y.P. Appeal allowed.