Mcleod And Company Ltd vs Workmen on 29 November, 1963

Equivalent citations: 1964 AIR 1449, 1964 SCR (5) 568, AIR 1964 SUPREME COURT 1449, 1963-64 25 FJR 328, 1964 8 FACLR 125, 1964 (1) LABLJ 386, 1964 5 SCR 568

Author: P.B. Gajendragadkar

Bench: P.B. Gajendragadkar, K.C. Das Gupta

PETITIONER:
MCLEOD AND COMPANY LTD.

Vs.

RESPONDENT:
WORKMEN

DATE OF JUDGMENT:
29/11/1963

BENCH:
GAJENDRAGADKAR, P.B.
BENCH:
GAJENDRAGADKAR, P.B.
GUPTA, K.C. DAS

CITATION:
1964 AIR 1449 1964 SCR (5) 568
CITATOR INFO :
RF 1972 SC1967 (3)
RF 1973 SC1156 (11)

ACT:
Industrial Dispute-Worker's claim for cash allowance in lieu of tiffin arrangements-Implied condition of service-Re-employment of retired persons-Limited direction by Tribunal, if proper.

HEADNOTE:
The disputes between the appellant company and its workmen were referred to the Industrial Tribunal. The workmen claimed that (1) they should be given cash allowance in lieu of the tiffin :arrangements made by the company, and (2) the practice started ,by the company of re-employing retired persons should be discontinued. The Tribunal directed : (1) the clerical staff should be paid As. -/8/- per day and the

subordinate staff As. -/6/- per day on all working days, and (2) the company should stop the reemployment of retired workmen in the category of clerks above C grade. In respect of the subordinate staff as also in regard to the lower grade clerks, the Tribunal thought it unnecessary to make any such direction. The evidence showed that in the region 31 comparable concerns were supplying free tiffin to their employees and that the appellant company had been throughout making .provision for tiffin to its employees. It was also found that the policy adopted by the company of re-employing the retired personnel was not based solely on humanitarian grounds and that when retired persons were re-employed they were paid a much smaller salary for doing the same work than they were drawing before retirement.

569

Held:(i) Though under the provisions of the Factories Act there was no obligation on the company, either statutory or otherwise, for giving the workers a cash allowance for tiffin, the history of the relations between the parties coupled with the prevailing practice in the comparable concerns showed that it was an implied condition of service that in addition to the wages and dearness allowance a provision for tiffin was an amenity to which the employees were entitled, and that the decision of the Tribunal could not be interfered with.

(ii) The limited direction issued by the Tribunal in respect of the re-employment of retired persons was neither improper nor unjustified.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 514 of 1963. Appeal by special leave from the judgment Award dated August 21, 1962, of the Fourth Industrial Tribunal, West Bengal in Case No. VIII-332 of 1961.

A.V. Viswanatha Sastri, D.N. Gupta, S.C. Mazumdar and B.N. Ghosh, for the appellant.

D.L. Sen Gupta and Janardan Sharma, for the respondents. November 29, 1963. The Judgment of the Court was delivered by GAJENDRAGADKAR, J.-The industrial dispute between the appellant, Mcleod & Company Ltd., and the respondents, its workmen, which has given rise to the present appeal centered round two items of claim made by the respondents. The respondents claimed that they should be given cash allowance in lieu of the tiffin arrangements at present made by the appellant, and they urged that the practice started by the appellant of re-employing retired persons should be discontinued. The Tribunal has granted the first claim and has directed that the clerical staff should be paid As.

-/8/- per day and the subordinate staff As. -/6 ' - per day on all working days in lieu of the tiffin arrangements which are at present made by the appellant. In regard to the second claim, the

Tribunal has ordered that the appellant should stop the re-employment of retired workmen in the category of clerks above 'C' grade. In respect of the subordinate staff as also in regard to the lowest grade clerks, the Tribunal thought it unnecessary to make any such direction. That is how the latter claim has been partially allowed. It is against this award that the appellant has come to this Court by special leave.

The total number of employees in the employment of the appellant is about 453. 36 of them are officers; 90 are junior grade Assistants, while 196 are clerks and 131 belong to the subordinate staff. It is in regard to the last two categories of the appellant's employees that the two items of dispute have reference in the present proceedings. It appears that in 1956 there was an industrial dispute between the parties, one of the items in dispute being the claim made by the respondents in respect of tiffin on working days. In those proceedings, however, the said claim was not pressed and the matter was left to the discretion of the appellant. After the award was published, the parties entered into direct negotiations in respect of the claim of tiffin allowance and according to the evidence of Mr. Mazumdar, the General Secreatry of the respondents' Union, the management then assured the respondents that it would consider the quantum and value of free tiffin afterwards and a settlement was then reached. Accordingly, two cups of tea and two biscuits are given by the appellant to the clerical staff, whilst one cup of tea and one biscuit is given to the members of the subordinate staff. On Saturdays the same ration of tiffin is supplied to the clerks and the sub-staff alike.

In the present dispute, the respondents contended that the tiffin arrangements made by the appellant were unsatisfactory and they urged that a cash allowance should be given to them in that behalf. This claim has been allowed by the Tribunal. Mr. Sastri for the appellant contends that the Tribunal has erred in law in making an award in respect of the cash allowance for tiffin, because he argues that it is not obligatory on the part of the appellant to make any provision for the tiffin of its employees. Under the relevant provisions of the Factories Act, a canteen had been started by the appellant, but there is no obligation on the appellant, either statutory or otherwise, for providing any further facility to the employees by way of giving them a cash allowance for tiffin. He also emphasised the fact that the wage structure which prevails in the appellant's concern represents a fair wage structure and the dearness allowance is paid to the respondents according to the Bengal Chamber of Commerce Formula; the said formula takes care substantially of the rise in the cost of living from time to time. That is another reason on which Mr. Sastri relies in resisting the respondents' claim for cash allowance in lieu of tiffin. Prima facie, there is some force in these contentions.

But, on the other hand, the evidence shows that in the region as many as 31 comparable concerns are supplying free tiffin to their employees (Ext. 10). Besides, as we have already seen, the appellant has throughout been making provision for tiffin of its employees and, in fact, when after the award was pronounced in the proceedings of 1956 and this question was taken up for direct negotiations between the parties, the appellant agreed to consider the claim sympathetically and make a suitable provision in that behalf That is how the prevailing arrangements for tiffin came to be introduced. Under these circumstances, if the Tribunal took the view that the appellant was under an obligation to provide some cash allowance for tiffin to its employees, we do not see how we can interfere with it on the ground that the impugned decision is erroneous in law. The history of the relations between

the parties coupled with the prevailing practice in the comparable concerns in the region strongly supports the view taken by the Tribunal that in the appellant's concern it was an implied condition of service that in addition to the wages and dearness allowance, a provision for tiffin was an amenity to which the employees were entitled. That being so, we do not think that the appellant's grievance against the direction in the award that As. -/8/- and As. -/6/ - per day should be paid respectively to the members of the clerical staff and the substaff on all working days, can be upheld.

That takes us to the respondents' claim that the practice of employing retired men should be stopped. Mr. Sastri contends that in acceding partially to the demand made by the respondents, the Tribunal has overlooked the fact that the re-employment of retired persons was mainly inspired by humanitarian considerations. When it appeared to the appel- lant that some employees who had retired found it difficult to maintain themselves and their families, the appellant sympathetically and generously considered their request for re-employment and that is, the basis on which some of the re-employments have been made. It may be conceded that some of the re-employments may have been actuated by humanitarian motives and the appellant cannot, therefore, be blamed on that account; but there are some other factors in relation to this problem of re-employment which cannot be ignored. It appears that as many as 6 persons have been re-employed and the correspondence between the parties on this subject shows that the respondents felt that the policy adopted by the appellant in re-employing the retired personnel was not based solely on humanitarian grounds. When the respondents had raised a dispute on this point in 1960, the State Government had refused to make a reference on the ground that only 4 cases of reemployment had been brought to its notice, and so, the problem did not call for any consideration at that stage. Thereafter, the respondents represented to the State Government that though the company gave assurances to its employees that re-employment would not be resorted to on a liberal scale, those assurances were disregarded and the practice was being followed in many cases and that posed a serious problem to the -respondents. Besides, it does appear that when retired persons are re- employed, they are paid a much smaller salary for doing the same work than they were drawing before retirement. Take, for instance, the case of Chandi Charan Banerjee. Before he retired, he was drawing a basic salary of Rs. 380 and dearness allowance. On his re-employment, he got a consolidated salary of Rs. 250 without any dearness allowance. and that means that the re-appointed employee was getting about half his former wages for doing the same work . This aspect of the matter introduces a serious infirmity in the, appellant's case as it was presented before us by Mr. Sastri. If re-employments are made on the basis of reduced salary, that really means that the appellant is introducing a wage structure in respect of the reemployed personnel which is definitely inferior to the wage structure devised for the employees of the appellant by the award , and that clearly cannot be permitted under industrial law. Besides, if senior persons are re-employed after retirement, that is apt to retard or hamper the prospects of promotion to which the junior employees are entitled to look forward. It is in the light of these facts that the question posed by the respondents' demand must be considered. Thus considered, we see no justification for Mr. Sastri's grievance that the limited direction issued by the award is either improper or unjustified. The fact that the re-employed persons have made an affidavit supporting the practice adopted by the appellant can have no material bearing in dealing with the point; in the very nature of things, the said re-employed persons are bound to support the appellant.

The result is, the appeal fails and is dismissed with cost.

Appeal dismissed.