Associated Cement Staff Union And The ... vs The Associated Cement Co. Ltd., Bombay, ... on 3 December, 1963

Equivalent citations: AIR1964SC914, [1964(8)FLR108], (1964)ILLJ12SC, AIR 1964 SUPREME COURT 914, 1964 (1) LABLJ 12, 1963-64 25 FJR 305, 1964 (1) SCWR 265

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

JUDGMENT

Das Gupta, J.

1. The subject-matter of these five appeals is two disputes between the Associated Cement Company Ltd., and their workmen. The appeal which has been numbered C. A. No. 1 of 1963 and the two appeals numbered C. A. Nos. 4 and 5 of 1963 are on the question of working hours for the workmen. The first of these is by the workmen and the other two by the Company. The appeal Nos. 2 and 3 of 1963 are on the question of holidays -- one being by the workmen and the other by the Company.

2. For many years, it appears, the working hours of this Company were from 10 a.m. to 1.30 p.m. and 2.30 p.m. to 5.45 p.m. on week days and from 10.30 a.m. to 1.30 p.m. on Saturdays. The total working hours thus were 34-1/4 hours. In a dispute raised by the workmen in 1950 the demand was made for the reduction of working hours on week days by 15 minutes every day, i.e., 10 a.m. to 5.30 p.m. with one hour's recess. The dispute was referred to a tribunal and the demand was rejected. In Reference No. 111 of 1959 disputes arising out of the demands of the workmen as regards revision of wages, dearness allowance and certain other matters were referred to Shri M.R. Mehar, Industrial Tribunal, for adjudication. Though the question of revision of working hours was not the subject matter of the reference, the Company in its written statement submitted that the hours of work of the employees should be rationalised by increasing them and bringing them in line with those of other establishments and pleaded that the Tribunal might be justified in making an award raising the hours of work in that very reference under Sub-section (4) of Section 10 of the Industrial Disputes Act. Shortly after this, the petitioner-company gave a notice of change on November 23, 1959 proposing to increase the hours of work from 34-1/4 to 37-1/4 per week, changing the office timings from 10 a.m. to 1.30 p.m. and 2.30 p.m. to 5.45 p.m. on week days, and 10 a.m. to 1.30 p.m. on Saturdays. This question of change of hours of work was thereupon referred for adjudication in Reference No. 247 of 1959. Another Reference (No. 97 of 1961) was later made by the Government as regards the question of working hours on the demand of workmen for reduction of the working hours. That demand was that the working hours and working days should be from 10.30 a.m. to 5.30 p.m. on week days with an hour's recess and 10.30 to 1.30 p.m. on Saturdays. The award of the Tribunal is that weekly hours of work be increased to 36 -- it being left to the Company to fix the

actual working hours on week days and Saturdays after consulting the Union. The Tribunal also directed that if at any time the Company and the Union agree it would be open to the Company to have a five-day week arrangement and in that case the hours of work might be 36-1/4 hours. The workmen in their appeal challenge this increase of working hours to 36 while the Company in their appeals contend that the Tribunal was wrong in rejecting their prayer for increasing the working hours to the extent as prayed for by the Company.

3. The first contention raised by Mr. Ramamurthi in support of the workmen's appeals is that having fixed the wages of the workmen on the basis of the existing working hours of 34-1/4 hours in its award in Reference No. 111 the Tribunal was not justified in changing the working hours without making a change in the wage rates. It is argued that this increase in the working hours without an increase in the wage rates amounts really to a gift of a considerable sum of money to the Company, as but for this increase the workmen would have been entitled to overtime payment for the additional hours they will have to work under the present award. This argument seems to us to be misconceived. It is not the function of industrial adjudication to fix the working hours with an eye to enabling the workmen to earn overtime wages. Hours of work have to be fixed in consideration of many factors, including the question of fatigue on the health of the workmen, the effect on their efficiency, the physical discomfort that may result from long and continuous strain, the need of leisure in the workmen's lives, the hours of work prevailing for similar activities in the same region and also in similar concerns and other relevant factors. But once a conclusion about the normal working hours is reached after considering the optimum working hours on a consideration of all the relevant factors, industrial adjudication cannot hesitate to give effect to its conclusion merely because the workmen would have been entitled to more wages at overtime rates if the hours of work had been fixed at less. While it is true that in fixing the proper wage scale the question of work load and so the matter of working hours cannot be left wholly out of consideration, many other factors including the need of the workmen, the financial resources of the employer, the rates of wages prevailing in other industries in the region have all to be considered in deciding the wage scale. It would be against the interests of workmen, the employers and the country as a whole to bring into force wage rates moving on a sliding scale according to the hours of work. The proper solution of the difficulty lies in fixing wage scales after consideration of all the relevant factors including the working hours and again to fix working hours on a consideration of all relevant factors but without an eye to the effect on the overtime payment of workmen. We find therefore no substance in the workmen's contention that the Tribunal was not justified in changing the working hours after it had fixed the wage rates for the workmen in Reference No. 111 of 1959 on the basis of existing working hours.

4. It may be pointed out in this connection that when the Tribunal was deciding the dispute in Reference No. 111 on the question of wages. Reference No. 242 of 1959 on the question of working hours was also pending. But this could not be heard at the time as its hearing had been stayed by the High Court in an application under Article 226 of the Constitution. In any case, it is clear that the question of wages had been decided on the assumption that the working hours would be fixed at a reasonable figure and not on any assumption that the existing working hours were proper and reasonable. The first contention raised by the workmen therefore fails.

5. It was next urged that the existing working hours having been found reasonable by the Industrial Tribunal in 1950 there was no sufficient justification for changing them in the present Reference. There is, in our opinion, no substance in this argument. It is true that too frequent alterations of conditions of service by industrial adjudication have been generally deprecated by this Court for the reason that it is likely to disturb industrial peace and equilibrium. At the same time the Court has more than once pointed out the importance of remembering the dynamic nature of industrial relations. That is why the Court has, specially in the more recent decisions, refused to apply to industrial adjudications principles of res judicata that are meant and suited for ordinary civil litigation. Even where conditions of service have been changed only a few years before, industrial adjudication has allowed fresh changes if convinced of the necessity and justification of these by the existing conditions and circumstances. Where, as in the present case, in a previous Reference the Tribunal had refused the demand for change, there is even less reason for saying that that refusal should have any such binding effect. It is important to remember in this connection that working hours remained unchanged for many years in this concern and during these years, considerable changes have taken place in the country's economic position and expectations. With the growing realisation of need for better distribution of national wealth has also come an understanding of the need for increase in production as an essential pre-requisite of which greater efforts on the part of the labour force are necessary. That itself is sufficient reason against accepting the argument against any change in working hours if found justified on relevant considerations that have been indicated above. We are satisfied that in arriving at the figure of 36 working hours in a week the Tribunal has given proper weight to all relevant considerations.

6. It is worth mentioning that in appreciating the need for leisure on the part of the workmen the Tribunal has left it open to the Company and its workmen to agree on a five-day week with the total working hours at 36-1/4. We see no justification for interfering with the Tribunal's award in this matter. The Company's appeals for an increase in working hours over and above what has been awarded by the Tribunal have not been pressed before us.

7. Civil Appeal No. 1 of 1963 and C. A. Nos. 4 and 5 of 1963 are accordingly dismissed. There will be no order as to costs.

8. The dispute on the question of holidays arose after the Company gave a notice of change on January 31, 1961 under Section 9(a) of the Industrial Disputes Act proposing to reduce the number of holidays observed by it. It appears that a dispute as regards holidays was considered) in 1950 by the Industrial Tribunal and an award was made directing the Company to observe Bank holidays except such bank holidays as are observed for balancing six-monthly accounts. The Company's case in the present Reference was that in the present position of the country in general and the needs of the cement industry in particular it is necessary to reduce the number of holidays and that 16 holidays in a year would be proper and sufficient. The workmen resisted any reduction whatsoever in the number of holidays. The award is that the number of holidays should be 21 instead of 16 though it has, recorded its view that this number of 21 is too large.

9. It has been argued before us on behalf of the workmen-appellants that the Tribunal was not justified in making any change in the old position that the Company would observe all the public

holidays granted by the Government. On behalf of the Company it has been urged that the Tribunal was wrong in fixing the number of holidays at 21 even though it was satisfied that it was too large. While discussing in the other appeals the question of justification for increasing the working hours, we have mentioned the growing realisation in the country of the need for increase in the country's productivity along with the necessity of better distribution of the wealth produced. It cannot be disputed that a necessary step in this direction is the reduction in the number of holidays. That is the main reason for which we agree with the Tribunal that the large number of public holidays declared by the Government of Maharashtra need not be followed by the Industrial concerns. The figures mentioned by the Tribunal show that in Madras the number of public holidays was fixed at 14, in Andhra Pradesh 17, in Mysore at 15 and in Uttar Pradesh at 18. It appears to us that the lesser number of holidays as fixed by these Stages is more suitable for industrial concerns than the large number of public holidays that have been favoured by the Governments of Maharashtra, West Bengal, Bihar, Rajasthan and Gujarat. We find no difficulty thus in agreeing with the Tribunal that the number of 21 holidays fixed by it is too large. We are unable however to appreciate the reason which weighed with it in awarding 21 holidays though it was itself convinced that that figure was too large. As a reason for fixing 21 holidays the Tribunal has stated that there has been a practice in large number of commercial concerns to observe all public holidays and it would not be wise for the Tribunal to make any drastic reduction all at once in the case of one Company. We are not convinced by this reasoning. It may also be mentioned that in Pfizer (Private) Ltd. Bombay v. Its Workmen, this Court has fixed 16 as the number of holidays for the workmen. We see no reason why in the present case also that standard should not be followed.

10. We have come to the conclusion that the number of holidays should be fixed at 16. We therefore allow the Company's appeal (C. A. No. 3 of 1963) on the question of holidays and fix the number of holidays at 16 instead of 21 as awarded and dismiss the workmen's appeal (C. A. No. 2 of 1963) on the question of holidays. This award of 16 holidays in a year will come into effect from the year 1964. There will be no order as to costs.