Phaltan Sugar Works Ltd., Sakharwadi vs Employees Of The Phaltan Sugar Works ... on 12 April, 1960

Equivalent citations: AIR1967SC330, (1961)IILLJ136SC, AIR 1967 SUPREME COURT 330, 1961 2 LABLJ 133

Author: K.C. Das Gupta

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

JUDGMENT

K.C. Das Gupta, J.

1. This appeal is against the award of the Industrial Court, Bombay, in a reference made under Section 73-A of the Bombay Industrial Relations Act, 1946 asking the appellant, the Phaltan Sugar Works Ltd., Sakharwadi, to pay dearness allowance to its employees who are represented by Phaltan Taluka Sakhar Kamgar Union at the following rates:

Monthly-rated Employees.

Employees whose basic wages are between Rs. 25 and Rs. 50 .. Rs. 45 Employees whose basic wages are between Rs. 51 and Rs. 100 .. Rs. 55 Employees whose basic wages are between Rs. 101 and Rs. 150 .. Rs. 62 Employees whose basic wages are between Rs. 151 and Rs. 200 .. Rs. 67 Employees whose basic wages are between Rs. 201 and Rs. 250 .. Rs. 72 Employees whose basic wages are Rs. 251 and above .. Rs. 77 Daily-rated Employees.

```
Employees whose basic wage
 is between Rs. 0-14-0 and
 Rs. 1-15-0              .. Rs. 1-11-0
Employees whose basic wage
 is between Rs. 2 and
 Rs. 3-14-0          .. Rs.  2-1-0
Employees whose basic wage
 is between Rs. 3-15-0 and
 Rs. 6                   .. Rs.  2-4-0.
```

2. At the time the reference was made the workmen were already in receipt of

dearness allowance at a lower rate in pursuance of an agreement between the parties arrived at in 1951. In 1957 a reference as regards the fixation of wage scales for the workmen was pending before the Wage Board for the sugar industries in Bombay. On February 15, 1957, terms of agreement between the parties in respect of wage scales were submitted before the Board and an order was made in accordance therewith. By this order a time scale of wages came into operation, the starting pay being different for different categories. The lowest starting pay was 15 annas for office boy. The workmen's contention in the present dispute was that in view of the high cost of living the dearness allowance which they were already getting under the 1951 agreement added to the wages they are receiving under the Wage Board's order on the agreed basis would leave a considerable gap between their reasonable requirements and the means to satisfy them, and the dearness allowance ought to be raised to reduce the gap. Their case further was that the financial position of the industry was more than sound and the employer had capacity to pay. The main plea in the employer's written statement was that the workmen should not be allowed to raise such a claim for higher dearness allowance so soon after their wages had been increased by agreement, It was said "that the workmen ought to have made the present demand at the time of the recent fixation of revised pay scales, that the employer agreed to the higher revised wage scales on the presumption that the workmen would not agitate for the revision of the existing scales of the dearness allowance. It was also urged that there was no justification for placing on the employer fresh burden in the shape of dearness allowance after it had acted liberally and generously in respect of its workmen in various matters.

3. Though it does not appear from the award that this plea that no dearness allowance should be allowed in view of the fact that no such claim had been raised prior to the recent agreement as regards wages and that the employer had agreed to the higher wage rate on the presumption that no claim for higher dearness allowance would be made was pressed at the hearing before the Tribunal, the main contention of the appellant before us has been based on this plea. It has been urged that when the higher wage rates were agreed upon, both the employer and the workmen took into consideration the total emoluments that the employer would have to pay and the workmen would receive in the shape of basic wage and dearness allowance together and that there was a tacit understanding between the parties that dearness allowance would continue at the old rates. It is said that but for this understanding the employer would not have agreed to the higher rate of wages. Learned Counsel for the appellant has suggested that the workmen after having lulled the employer into thinking that they were agreeing that dearness allowance would remain the same and thereby induced it to agree to the higher wages, could not now be allowed so soon after the increases in the wage rate higher dearness allowance. It has to be mentioned, however, that even in the written-statement no case that there was such an understanding between the parties has been made. All that it said on this point appears to be in Para. 4 of the written-statement which is in these words:-

> "With reference to Para. No. 4 of the statement of claim, the 2nd party submits that the 1st party ought to have made the present demand at the time of the recent fixation of revised wage scale. The second party agreed to the higher revised wage scales on the presumption that the 1st party would not agitate for a revision of the existing scales of D. A. The 2nd party submits that it is not now open to the 1st party to make a demand for higher dearness allowance at this stage after the. fixation of the wage scale."

4. It is not even pleaded here that the workmen did or said anything which gave any ground for the employer's presumption that there would be no agitation for revision of the existing scales of dearness allowance. In the absence of even a suggestion in the written statement of any understanding between the parties that the dearness allowance would remain the same or that the workmen gave the employer any ground for presuming that they would not agitate for a revision of dearness allowance, the appellant cannot be allowed to plead any such understanding or to say that it was misled into thinking that there would be no agitation for higher dearness allowance. If the appellant did presume that there would be no such agitation, the appellant has to thank itself for the same. It is interesting to note in this connection that nobody has given evidence on behalf of the appellant to satisfy the Court that in fact any such presumption was made by the appellant. If it was a fact that in agreeing to the higher wage scale the appellant had presumed that the workmen would not agitate for a revision of the dearness allowance it should have been possible to establish this by examination of its General Manager or some other responsible official. No such evidence has been given. It will not be unreasonable to think, therefore, that in fact there had been no such presumption.

5. An examination of the scales of wages that were agreed upon fortifies us in this conclusion. The agreed scheme provided for different time scales of wages for different categories of employees with different starting pay and different rates of increments. The lowest rate appears to be for the office boy and the laboratory boy who start with 15 annas per day and can rise to Rs. 1-9-0, the rate of increment being one anna per year. The next higher rates are for Centrifugal Operator, Assistant Eva porator Man and Juice Heater Man, their starting rates of pay being Rs. 1-9-0 with an annual increment of one anna per year. It is clear, therefore, that these different scales were fixed after adding differentials on the minimum rates fixed for the office boy and the laboratory boy. The minimum rate of 15 annas per day was just higher than Rs. 23 per month for 26 days work which was the minimum basic wage fixed for sugar mills in Deccan, by the Naik Award of 1953. It seems to us that if the total emolument theory that the wage should be fixed at such a figure that taken along with dearness allowance already existing a reasonable wage packet should be received by the workmen at the end of the week had been considered by the employers and workmen at the time of agreement on wage rates to be fixed by the Wage Board, the rates would have been fixed higher. This examination of wage scales agreed upon in 1957 fortifies us in the conclusion that in fact the question of keeping the dearness allowance at the same rate as before did not enter the minds of either the employer or the workmen at that time. The first contention raised on behalf of the appellant, therefore, fails.

6. This brings us to the question of the propriety of the actual dearness allowance awarded. In fixing these rates the Tribunal has taken into consideration: (1) the extent of the rise in the cost of living since 1939, on the basis of which year Mr. Naik had fixed the minimum; (2) the financial capacity of the company; and (3) the rates of dearness allowance which other sugar factories in the same region had paid. It was urged on behalf of the appellant that the Tribunal has erred in law in accepting the affidavit of one Mr. Fauzdar for the purpose of showing prices at Sakharwadi, that it had not taken into consideration the fact that prices in the Nira Canal Division and the Nagar Division are not the same, and that in any case, there was no justification for fixing clearness allowance higher than what the Belapur factory alleged by the appellant to be the most prosperous concern in the neighbourhood, was paying. As regards this last contention, it is pertinent to point out that shortly after the award under appeal was published, the Belapur Sugar Factory has increased the dearness allowance to its workmen and there is hardly any difference between the new rates being paid by the Belapur factory and the rates awarded by the Tribunal. Nor is there anything to show that Belapur is more prosperous than the appellant company. As regards the contention that the cost of living in the Nira Canal Division where the appellant's factory is situated is lower than the cost of living, in the Nagar Division, where other sugar factories are situated, we find no material on the record to support it. The appellant's contention that Fauzdar's affidavit as regards Sakharwadi prices should not have been accepted is based on the ground that Fauzdar was not produced for cross-examination. We notice, however, that no prayer appears to have been made before the Tribunal on behalf of the appellant that Fauzdar should be produced for cross examination. It is too late for the appellant to make a grievance now of the fact that Fauzdur was not produced. It is worth mentioning that the main feature of the cost of living which impressed the Tribunal was that it had risen four times since 1939. It is not seriously contended that in this estimate the Tribunal was wrong.

7. Fixation of these rates of dearness allowance is always a delicate operation and when the Tribunal after a fair consideration of the available material has fixed certain rates as reasonable, these should not be disturbed except on clear proof of error or unfairness. Far from there being any such proof here, the fact that Belapur factory within a short time after this award, has been paying almost similar rates of dearness allowance is good reason to think that what the Tribunal has awarded is reasonable.

8. Objection is lastly taken to the direction of the Tribunal that these new rates would be payable with effect from March 1, 1958. It has to be noticed that the reference itself was made on November 7, 1957. It was open to the Tribunal to give effect to the new rate with effect from that very day, i.e., November 7, 1957; but when making the award on November 28, 1958, the Tribunal thought it fair to make the new rates effective not from November 7, but from much later date of March 1, 1958. There is absolutely no ground for interfering with the Tribunal's exercise of its discretion in the matter. Reference need only be made in this connection to the very satisfactory financial position of the company during the last few years. As the Tribunal has pointed out the latest balance-sheet for 1956-57 shows that on a paid up capital of Rs. 50 lacs of which Rs. 40 lacs comprise bonus shares, the reserve fund is over Rs. 69 lacs and that on fixed assets costing 116 lacs depreciation has been written off to the extent of Rs. 67 lacs. Dividend for the year 1955-56 has been paid at the rate of 10 per cent and for 1956-57, 24 per cent, in both cases free of income-tax. With this back-ground of the

company's prosperity the Tribunal could have very well made these new rates effective from the very date of reference, viz., November 7, 1957. Instead it made them effective from March 1, 1958. The company can have no reasonable basis of grievance against this.

9. As all the contentions raised in the appeal fail, it is dismissed with costs.