

## **India General Navigation And Railway ... vs Their Workmen And Anr. on 23 March, 1960**

**Equivalent citations: AIR1960SC1286, [1965(10)FLR250], (1960)ILLJ561SC, AIR 1960 SUPREME COURT 1286, 1960 (1) LALJ 561**

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

### **JUDGMENT**

K.N. Wanchao, J.

1. This is an appeal by special leave in an industrial matter. The appellant is a steamer company with its head office at Calcutta. There was a dispute between the appellant and its workmen, which was referred to the Sixth Industrial Tribunal, West Bengal. Out of the matters in dispute before the tribunal, there are only two which survive in the present appeal, namely, (i) dearness allowance for steamer and flat clerks and (ii) working hours for ghat employees on Saturdays.

Re. (i).

(2) The pay scales of the flat and steamer clerks and the dearness allowance payable to them have been matters of adjudication in previous awards between the company and its workmen. The first of these disputes was in 1948 and in the award following that dispute these clerks were put in grade 'E'. Then there was another dispute in 1953, in which a claim for revision was rejected. Eventually by settlement between the company and its workmen, the scale of these clerks was raised to Rs. 60-3-102. That scale has been upheld by the present tribunal which refused any further change in it. At the time of the present dispute these clerks were getting a minimum of Rs. 35 as dearness allowance. Their case was that the company was paying what is known as the Bengal Chamber of Commerce rate of dearness allowance to all its staff in the head office and at the Calcutta ghats. The flat and steamer clerics also claimed that they should be paid the same rate of dearness allowance, which is very much higher. The tribunal after considering the circumstances has awarded the Bengal Chamber of Commerce rate of dearness allowance to these clerks also from September 1957.

3. The company contends that the tribunal was patently wrong in allowing this rate of dearness allowance to these clerks, as at any rate, it is not meant for workmen living outside Greater Calcutta. It is also urged that on principle, dearness allowance should be allowed at the rate prevalent in the locality, where a workman is posted and as these workmen are not posted in Greater Calcutta they should not have been awarded this rate of dearness allowance.

4. The tribunal's reason for allowing this rate of dearness allowance to these clerks was that they were directly under the control of the head office and ought to be treated as belonging to the head

office. The tribunal was further of the opinion that dearness allowance was a method to neutralise the high cost of living and as the members of the family of these workmen must be living in Calcutta they should get the same rate as other employees of the company living in Calcutta.

5. So far as the principle is concerned there is no doubt that dearness allowance depends upon the place of posting of an employee. The difficulty, however, of applying this principle in the case of these clerks is that they have no definite place of posting; they are flat and steamer clerks and their main duty is to work on flats and steamers while they are plying on the river. In such a case the principle that dearness allowance should be governed by the place of posting can only mean that the employees should get dearness allowance where their families (i.e. wife and children) are residing, for that would be the place of posting of such employees for all practical purposes. The tribunal's view therefore that these clerks should be paid this rate of dearness allowance would be justified on the presumption made by it that the families of these clerks must necessarily be living in Calcutta when they were on duty on a flat or steamer. There is, however, no proof of this on the record and it cannot necessarily be assumed that every such clerk must be keeping his family in Greater Calcutta. As we have pointed out above, this rate of dearness allowance is not meant to apply to those who reside outside Greater Calcutta. Though therefore the tribunal is right in awarding this rate of dearness allowance to these clerks, it went wrong in assuming that every one of these clerks was residing in Greater Calcutta.

6. It is also urged that in view of the decision of the tribunal in 1954 by which the demand for a change in the earlier award of 1949 had been turned down, no reason has been shown for making the change from September 1957 and that the earlier award should be treated as *res judicata*. Our attention in this connection was drawn to *Burn and Co., Calcutta v. Their Employees*, where it was held that :

"An award of an industrial tribunal is intended to have a long term of operation, and can be reopened under Section 19(6) of the Industrial Disputes Act, No. 14 of 1947, only when there has been a material change in the circumstances on which it was based."

Apart from the fact that Section 19(6) of the Industrial Disputes Act itself contemplates that the award cannot be binding after it is terminated and therefore the principle of *res judicata* should be applied with caution in industrial disputes which relate to such matters as wages and dearness allowance, there can be no doubt that if circumstances have changed there is a good case for a change in the award. In the present case it is common knowledge that prices have risen in the country between 1954 and 1957 and it cannot therefore be said that there has been no change in circumstances justifying a change in the dearness allowance from September 1957.

7. We are therefore of opinion that the tribunal's award should be modified to this extent that this rate of dearness allowance should only be allowed to such of these clerks who keep their families (i.e. wife and children) in Greater Calcutta. So far as the others are concerned, the existing rate will continue. We order accordingly.

Re. (ii).

8. As to the working hours on Saturdays in Ghat Offices the tribunal has upheld the award of 1949, though there is a slight mistake in the view it has taken about the working hours on Saturdays. According to the award, the working hours appear to be the same on all the days from Monday to Saturday : (see West Bengal Industrial Awards Quarter ending September 30, 1949, p. 416). But it is noted there that if the work permits the clerks are allowed to go away about 2 p.m. or 3 p.m. It was brought to the notice of the tribunal that there was an apprehension that the discretion to permit earlier departure on Saturdays might not be exercised in a liberal spirit. The tribunal therefore thought that a safeguard might be provided and it therefore directed that clerks detained after 3 p.m. on Saturdays would get half day's wages in addition to their normal wages. The company has challenged this direction on the ground that there is an obvious inconsistency in the award inasmuch as the tribunal had earlier upheld the hours of work provided in the award of 1949. These hours of work are 10 a.m. to 6 p.m. with midday recess for one hour. In view of this inconsistency which is undoubtedly there and also in view of the fact that in the award of 1949 as printed in the booklet (*supra*) there is a misprint and total hours of work are shown as 30, we consider that hours of work should be fixed so that the position may no longer remain obscure. We therefore fix 10 a.m. to 6 p.m. with midday recess for one hour from Monday to Friday and 10 a.m. to 3 p.m. with no recess on Saturday. If any worker is detained beyond 3 p.m. for half an hour or more upto 6 p.m. he will be paid one-fourth day's wages in addition to his normal wages. The other provisions of the 1949 award for working after 6 p.m. will stand.

9. The appeal is therefore partly allowed and the order of the tribunal modified in the manner indicated above on both the points. In the circumstances we order parties to bear their own costs.