Mysore State Road Transport ... vs S.K. Athani And Anr. on 8 August, 1973

Equivalent citations: AIR1973SC2448, [1973(27)FLR295], (1973)IILLJ399SC, (1973)2SCC540, 1973(1)SLJ891(SC), 1973(5)UJ810(SC), AIR 1973 SUPREME COURT 2448, (1973) 2 S C C 540, 1973 LAB. I. C. 1469, 1974 (1) SCJ 312, 1972 2 SCC 540, (1973) 2 LAB L J 399, 1973 27 FACLR 295, 27 FAC L R 295

Bench: P. Jaganmohan Reddy, S.N. Dwivedi

JUDGMENT

Dwivedi, J.

1. All those appeals raise a common question of law and are being disposed of by a common judgment.

2. The employees of the Mysore State Road Transport Corporation are divisible into three classes : (1) the employees of the erstwhile Road Transport Department of the State of Mysore (hereinafter called the Mysore employees) (2) the employees of the Bombay Road Transport Corporation who were working within such districts of the State of Bombay as were integrated with the State of Mysore (hereinafter called the Bombay employees), and (3) the employees of the Road Transport Department of Hyderabad working in such areas as were integrated with the State of Mysore (hereinafter called the Hyderabad employees) The employer and the employees concluded as agreement on January 10, 1958 in respect of certain terms and conditions of service. The agreement was made operative from April 1, 1957. Clause 5 of the agreement dealt with the dearness allowance payable to the employees. The dearness allowance was fixed on a graduated scale. It appears that the Bombay and Hyderabad employees were getting a higher dearness allowance which was an accident of the recognisation of States. Accordingly, proviso (a) to Clause 5 provided that they would be entitled to continue to draw dearness allowance at the rates which were applicable to them on November 1, 1956 and January 1, 1957 respectively. The agreement was to remain effective till March 31, 1960. On February 10, 1962 there was another agreement between the two parties. It was made effective from April 4, 1960 and was to continue until March 31, 1965, Clause 4 dealt with dearness allowance, The allowance was increased by Rs. 5/- in respect of all the employees except these who were getting pay between Rs. 301/- and Rs. 500/- per month. Proviso (a) to Clause 4 was similar to proviso (a) to Clause 5 of the earlier agreement. A third agreement was concluded on March 20, 1965. This agreement came into force on April 1, 1965 Clause 15 provided for dearness allowance payable from January 1, 1965. The marginal note to Clause 16(1) is revision of pay scales. The parties construed the first part of the clause differently, and hence the litigation culminating in these appeals. The text of the clause will be set out later after we have noticed certain orders issued

by the employer between 1960 and 1964.

3. The first order was issued on March 22, 1960. This order fixed the rate of dearness allowance of the employees with effect from January 1, 1960. Broadly speaking it increased the dearness allowance of the Mysore employees by Rs. 5/-. There was another increase of Rs. 5/- in dearness allowance with effect from January 1, 1961. The order increasing the amount stated that the increased dearness allowance would be payable to the Mysore employees as well as to the Bombay and Hyderabad provided they opted for the Mysore rates of dearness allowance. There was a further increase of Rs. 5/- in dearness allowance with effect from April 1, 1963. But the Bombay and Hyderabad employees could avail this addition only if they opted for the Mysore rates of dearness allowance. The last increase in the dearness allowance was given with effect from April 1, 1964. The amount of dearness allowance was increased by Rs. 5/-. The Bombay and Hyderabad employees could avail this increase only on their option for the Mysore rates of dearness allowance. An interim relief of Rs. 5/- per month was also granted to the employees with effect from April 1, 1964. This interim relief was not subject to option. Consequently, the Bombay and Hyderabad employees also were benefited by it.

4. Clause 16(1) of agreement of March 20, 1965 relevantly reads :

> The pay scales of the Corporation employees not having been revised since the first Truce Agreement of 10-1-59, the employees have been given interim relief as well as increased Dearness Allowance benefits as follows :
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> Date Amount Dearness 1-1-1960 Rs. 5/- p.m. (minimum) Allowance 1-1-1961 Rs. 5/- " " 1-4-1963 Rs. 5/- p.m. " 1-4-1964 Rs. 5/- p.m. " Interim relief 1-4-1964 Rs. 5/- p.m. "
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> The management, now agree to set up a Joint Committee of representatives of Management and Labour. The Committee will go into the question of revision of pay-scales and dearness allowance agreed upon by both the parties for mutually within the preview of the Joint Committee Board within a period of 12 months from the date of its Constitution by the Corporation Board or within any further extended period which the Joint Committee may require, but in any case within a total period of 18 months....

5. Sub-clause (ii)(a) of Clause 16 deals with interim relief. It reads :

> As some time would necessarily be required even after the Joint Committee's recommendations are received, for the Corporation Board to take its decisions thereon, it is agreed that a further Interim Relief of Rs. 7.50 p. per employee per month shall with effect from 1-4-1965 be paid to Class III and IV employees who are the time scale.

6. The respondents who were at one time employed in Bombay and Hyderabad applied under Section 33(c)(2) of the Industrial Disputes Act to the Labour Court, Hubli for direction to the

appellant for grant of increased dearness allowance from January 1, 1960 to December 31, 1964, according to the rates of dearness allowance mentioned in Clause 16(1). Their applications were contested by the appellant. According to the appellant, Clause 16(1) did not grant any dearness allowance, the Labour Court held that the respondents were entitled to increase dearness allowance under Clause 16(1).

7. The appellant filed writ petition under Article 226 of the Constitution in the High Court of Mysore against the order of the Labour Court. The High Court agreed with the view of the Labour Court and dismissed the writ petition. The appellant has now come to this Court.

8. The crucial question in these appeals is this : Does the first part of Clause 16(1) incorporate an agreement to the effect that the employees formerly employed in Hyderabad and Bombay will get dearness allowance from January 1, 1960 to December 31, 1964 at the rates mentioned therein.

9. Having given our careful consideration to the language and context of Clause 16, we have come to the conclusion that the question should be answered in the negative. We shall state our reasons now.

10. The words have been given are significant. They would refer to the interim relief and dearness allowance already given to the Mysore employees and such Bombay and Hyderabad employees as had opted for the Mysore rates of dearness allowance as stated in various orders issued between 1960 and 1964. It is not possible to spell out from them and agreement that the respondents would get interim relief and also increased dearness allowance retrospective effect from January 1, 1960. The next important word "now" in the second part of Clause 16(1). The word "now" occurs in the sentence the management now agree to set up a Joint Committee of representatives of management and Labour". If the first part of Clause 16(1) had really incorporated an agreement as contended for by respondents, the word "now" could not have been used in the second part. Instead of the word "now" the draftsman would have used the word "also" or "further", because the second part would incorporate another agreement. Again, the word "agree" is expressly used in the aforesaid sentence in the second part. Similarly the expression "It is agreed" is expressly used in Clause 16(II). If the first part of Clause 16(1) were intended to incorporate an independent agreement, the draftsman would have used the same language there, the commission of the word "agree" or "It is agreed" is therefore significant. It is plain that the first part of Clause 16(1) does not incorporate an independent agreement. The fact word 'employees' in the first part of Clause 16(1) cannot refer to all the employee belonging to Mysore as well as to Hyderabad and Bombay. It refers only to the Mysore employees because the increase in the dearness allowance made with effect from January 1, 1960, January 1, 1961, April 1, 1963 and April 1, 1964 were granted to the Mysore employees and to these Hyderabad and Bombay employees who made an option for the Mysore rates of dearness allowance. Admittedly, the Hyderabad and Bombay employees did not exercise requisite option. The High Court says that it makes little sense if the first part of Clause 16(1) is construed as a mere recital of history. If the draftsman had not intended to grant increased dearness allowance to the respondents, he would have omitted the first part and then Clause 16(1) would have included only the second part thereof. With respect this reasoning does not appear to us to be cogent for even on this reasoning the opening phrase in Clause 16(1) the "pay scales of the Corporation employees not having been revised since the first Truce Agreement of 10-1-1958" remains a mere recital of history and should

have been omitted. As the language of the first part is plain and unambiguous, it is not legitimate to speculate into the reasons which prompted the contracting parties to include it in Clause 16(1).

11. In support of its construction of Clause 16(1), the High Court has also pointed out that all the employees of the appellant, irrespective of the places from which they come, are entitled to an identical rate of dearness allowance from January 1, 1965. We are unable to appreciate what bearing this aspect would have on the construction of the first part of Clause 16(1), However, it may be pointed out that the Hyderabad and Bombay employees were getting higher dearness allowance than the Mysore employees. The increased dearness allowance given to the Mysore employees from January 1960 to April 1964 seems to have equalised the dearness allowance of all the employees and that seems to be the reason why from January, 1965 all the employees are given an identical rate of dearness allowance.

12. For the reasons already set forth, we are of opinion that the Labour Court was clearly wrong in its interpretation of the first part of Clause 16(1). Its order is vitiated by an error apparent on the face of the record. Accordingly these appeals are allowed. The order of the High Court is set aside. The writ petitions are allowed and the orders of the Labour Court are quashed. In view of the previous order of the Court, the appellants shall pay hearing, fee and costs (two sets) to the respondents.