Management Of May And Baker (India) Ltd. vs Their Workmen on 13 January, 1961

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

JUDGMENT

K.N. Wanchoo, J.

1. These two appeals arise from the same award of the Industrial Tribunal, Delhi, and shall be dealt with together. There was a dispute between the management of Messrs. May and Baker (hereinafter called the company) and its workmen with respect to various matters, which was referred for adjudication on January 6, 1956. The tribunal gave its award on October 19, 1957, and it is this award which is being assailed in these two appeals by the company as well as the workmen. It is not necessary to set out the points of dispute in detail. We propose to confine ourselves to the points raised by learned counsel on either side in the respective appeals and shall start with the company's appeal.

2. The first item relates to medical facilities. The main attack of the company is on that part of the award which directs the supply of injections or patent medicines at half cost when the company's doctor certifies that these are essential for the employee in question and this direction is to cover products other than those of the company. It is urged that this will increase the burden on the company enormously. However, the direction is subject to the further overall direction that the cost of medical assistance in any one year shall not exceed one month's salary including allowance of a particular workman. In the circumstances, the contention of the company that it will increase the burden on this head enormously is not justified.

We, therefore, reject the contention.

3. The next contention is with respect to leave facilities. The tribunal has directed that accumulation of privilege leave shall be allowed up to the maximum period of twelve weeks. This direction is attacked on the ground that it is against the provisions of Section 22(1) (b) (i) of the Delhi Shops and Establishments Act, No. VII of 1954.This contention must succeed, for Section. 22 (1) (b) (i) provides that privilege leave admissible may be accumulated upto the maximum period of thirty days. It was, therefore, not open to the tribunal to allow accumulation of leave upto twelve weeks.

The award of the tribunal is, therefore, modified and the accumulation of privilege leave is allowed upto thirty days only as provided by law.

4. Further the company attacks the provision as to maternity leave. It is enough to say that although the workmen claimed maternity leave, the company said nothing in its reply about it. In the circumstances we do not see any reason to interfere with the order of the tribunal with respect to this item.

5. The company next attacks the provision as to working hours. Its main contention is that fixation of working hours is peculiarly a management function and there was no reason for the tribunal to interfere with the hours of work fixed by the company, particularly when they were well within the hours allowed under the Delhi Shops and Establishments Act. It appears that the company's working hours are from 9 a.m. to 5 p.m. with three rest intervals-one hour for lunch, 15 minutes for morning tea, and 15 minutes for afternoon tea. The tribunal changed the hours to 9-30 a.m. to 5 p.m. with one hour's interval for lunch. Theoretically, therefore, there was no reduction in the working hours but practically there was because the tribunal directed that instead of the two intervals of 15 minutes each for tea which was supplied by the company to its workmen, it should see that the tea is supplied to the workmen at their tables. Obviously, therefore, what will happen is that the workmen will take their time for tea because they cannot both work and take tea at the same time; and the tribunal has in effect reduced the working hours by half an hour each day. There is in the circumstances no justification for this reduction. Similarly, the tribunal has reduced the working hours for the subordinate staff for which again we find no justification. In the circumstances the existing working hours which are well within the hours of work prescribed under the Delhi Shops and Establishments Act will continue and the tribunal's modification of them is set aside.

6. The next attack of the company is on that part of the award by which the tribunal has directed that those to whom a uniform is supplied can take it home. The present practice is that the uniform is not allowed to be taken home. It seems that the practice in this respect varies in different concerns. We see no reason, however, for interfering with the order of the tribunal in this behalf.

7. The next contention of the company is with respect to the raising of the minimum of the dearness allowance from Rs. 55 to Rs. 60 per mensem. The demand of the workmen was for an increase in the rate of dearness allowance coupled with a prayer that the minimum should be fixed at Rs. 75. The tribunal refused to change the rates but it granted the minimum of Rs. 60, which would benefit mainly the subordinate staff. It must be added that the tribunal merely says that in its opinion the rate of dearness allowance should be fixed at the minimum of Rs. 60 when the index figure is between 331 to 340 and has given no further reason for making this change; but on the whole we see no reason to set aside this order. The main ground on which it was urged that we should set side it is that no claim for such an increase had been made. This is incorrect, for, as we have pointed out, the claim was that the minimum should be fixed at Rs. 75, presumably at the index figure between 331 to 340. We, therefore, reject this contention.

8. The next contention on behalf of the company is with respect to the direction in the award relating to graduates. We have read the award of the tribunal in this behalf and see no reason to

interfere with it. The contention is rejected.

9. The next contention on behalf of the company is with respect to the order of reinstatement of Mukherjee. The company's case is that Mukerjee was discharged with effect from April 1, 1954. At that time the definition of the word "workman" under Section 2(s) of the Industrial Disputes Act did not include employees like Mukerjee who was a representative. A "workman" was then defined as any person employed in any industry to do any skilled or unskilled manual or clerical work for hire or reward. Therefore, doing manual or clerical work was necessary before a person could be called a workman. This definition came for consideration before industrial tribunals and it was consistently held that the designation of the employee was not of great moment and what was of importance was the nature of his duties. If the nature of the duties is manual or clerical then the person must be held to be a workman. On the other hand if manual or clerical work is only a small part of the duties of the person concerned and incidental to his main work which is not manual or clerial, then such a person would not be a workman. It has, therefore, to be seen in each case from the nature of the duties whether a person employed is a workman or not, under the definition of that word as it existed before the amendment of 1956.The nature of the duties of Mukerjee is not in dispute in this case and the only question, therefore, is whether looking to the nature of the duties it can be said that Mukerjee was a workman within the meaning of Section. 2(s) as it stood at the relevant time. We find from the nature of the duties assigned to Mukerjee that his main work was that of canvassing and any clerical or manual work that he had to do was incidental to his main work of canvassing and could not take more than a small fraction of the time for which he had to work. In the circumstances the tribunal's conclusion that Mukerjee was a workman is incorrect. The tribunal seems to have been led away by the fact that Mukherjee had no supervisory duties and had to work under the directions of his superior officers. That, however, would not necessarily mean that Mukerjee's duties were mainly manual or clerical. From what the tribunal itself has found it is clear that Mukerjee's duties were mainly neither clerical nor manual. Therefore, as Mukerjee was not a workman his case would not be covered by the Industrial Disputes Act and the tribunal would have no jurisdiction to order his reinstatement. We, therefore, set aside the order of the tribunal directing reinstatement of Mukerjee along with other reliefs.

10. The last contention raised on behalf of the company is regarding Iqbal Singh who has been awarded retrenchment compensation as well as gratuity. So far as retrenchment compensation is concerned, the tribunal has held that Iqbal Singh was entitled to retrenchment compensation under Section. 25-F of the Industrial Disputes Act. This view of the tribunal is in our opinion incorrect. Section 25-F came into force on October 24, 1953, while the services of Iqbal Singh were terminated on September 30, 1953. He was informed that his service would be terminated after September 30, 1953, and he was directed to take one month's salary in lieu of notice, as he was surplus. The tribunal was not right in holding that this meant that Iqbal Singh continued in service till October 30, 1953, and was, therefore, entitled to the benefit of Section 25-F. This is a case where the services were terminated from September 30, 1953, on payment of one month's salary in lien of notice. In such a case the service comes to an end on the date from which it is terminated. The matter would be different if one month's notice had been given to Iqbal Singh and after that month his services had been terminated. In that case he would be actually working for the mouth of notice and his services would have terminated after the notice period. In the present case, however, he was not

given one month's notice; what was done was that his services were terminated from September 30 and he was given one month's pay in lieu of notice. But, though the tribunal was wrong in holding that Section 25-F applied to Iqbal Singh, we see no reason to interfere with the order allowing one month's average pay as retrenchment compensation to Iqbal Singh, for it is not disputed that industrial tribunals used to give retrenchment compensation even before Section 25-F was enacted and that section merely standardised the practice which was generally prevalent. In the circumstances, the order as to payment of one month's average salary as retrenchment compensation to Iqbal Singh must stand. However, the other part of the order with respect to payment of gratuity is clearly unjustified. Under the scheme in force in the company at the relevant time, gratuity could only be awarded to an employee who had been in service for five year section. Iqbal Singh was not in service for that period. In the circumstances no gratuity could be granted by the tribunal under the scheme. The tribunal has noted that the company granted gratuity to some workmen who had less than five years' service. That is so; but that was a voluntary act of the company. The tribunal, however, cannot compel the company to grant gratuity against the scheme of gratuity in force. In the circumstances, the order allowing one month's basic salary as gratuity to Iqbal Singh must be set aside.

11. We now turn to the appeal of the workmen and propose to deal with the points raised on their behalf one by one.

12. The first contention relates to pay scales. The workmen contend that the scales should have been given retrospective operation from June 1953 or August 1954 and that there should have been point-to-point adjustment or at any rate adjustment on some principle. Their complaint in this respect is that the company made the fixation without any principle. These matters have been examined by the tribunal. It was found that the new pay scales were introduced from November 1954.The demand was made for the first time in August 1954. In Bombay the new pay scales were introduced in June 1953.Reference was made in January 1956. Taking all these considerations into account, the tribunal decided that there was no case for making any change in the matter of introduction of new scales and allowed the date from which the company introduced the new pay scales to stand. We see no reason to interfere with this order of the tribunal. Nor do we see any reason to interfere in the matter of fixation. The matter has been examined at length by the tribunal and we cannot say that its order is unjustified. It has not chosen to interfere with the fixation made by the company and in the circumstances we see no reason to Interfere with the order of the tribunal in this behalf.

13. The next contention of the workmen is with respect to medical facilities. They contend that no ceiling should have been fixed on medical expenses and that some provision should have been made for dependants. So far as the question of ceiling is concerned, the tribunal has fixed the ceiling and we see no reason to disagree with the view taken by the tribunal in this behalf. As regards dependants, it seems that though the demand was raised and was referred, both parties and even the tribunal overlooked it. In the circumstances there has been no examination of that question and we cannot now do that which the tribunal should have done. The question of dependants must, therefore, now await future agreement between the parties or some future award.

14. The next contention of the workmen is with respect to travelling allowance on transfer. This matter has also been considered by the tribunal carefully and we see no reason to disagree with its conclusion in this respect.

15. The next contention is with respect to bonus. The claim was for the year 1954-55.The company's rules provide for bonus as a condition of service and the only dispute was as to what date and salary should be taken into account for calculating the bonus according to rules. The tribunal has held that for the year in dispute the gross salary payable to an employee as on April 1, 1954, should be taken into account. We see no reason to interfere with this order. But the workmen contend that the tribunal has gone on further to say that "for the purpose of calculating bonus for the period subsequent to 31st March 1955, the existing rules set out in the written-statement of the management shall be in force and be applicable." It is contended that the only question referred to the tribunal was with respect to bonus for the year 1954-55 and it had no jurisdiction to pass any order with respect to bonus thereafter. This contention of the workmen is in our opinion correct; and this direction appearing in the award with respect to the period after March 31, 1955, is set aside. We should like to make it clear that we express no opinion one way or the other about the correctness on merits of this direction for the subsequent period.

16. The next contention of the workmen relates to the increments withheld. This issue has been considered at length by the tribunal and we see no reason to interfere with the award made by it in this behalf.

17. The next contention is with respect to gratuity. The workmen claim that gross salary should be taken into account in calculating gratuity while the company's gratuity scheme is based on basic salary. The tribunal has pointed out that the workmen in this company are getting double retiring benefit. In the circumstances we see no reason to interfere with the order of the tribunal by which it upheld the gratuity scheme of the company as it was.

18. We, therefore, dispose of both the, appeals in the manner indicated above. In the circumstances we pass no orders as to costs.