

Workmen Of Swadeshi Cotton Mills Co. ... vs Swadeshi Cotton Mills Co. Ltd. on 1 May, 1973

Equivalent citations: AIR1973SC2138, 1973LABLC1151, (1973)ILLJ261SC, (1974)3SCC177, AIR 1973 SUPREME COURT 2138, 1974 3 SCC 177, 1973 LAB. I. C. 1151, 1973 2 LBLJ 261, 27 FACLR 314

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Bench: P. Jaganmohan Reddy

JUDGMENT

P. Jaganmohan Reddy, J.

1. This appeal is by special leave against the award of the Industrial Tribunal (II) at Lucknow rejecting the claim of the Weaving Line Mistries (Line Jobbers) for payment of 121/2 per cent, allowance on their basic earnings working on four-loom system in accordance with the agreement dated September 8, 1967, arrived at before the Industrial Tribunal (I), U.P. in Reference No. 57 of 1966. In order to understand what has to be determined in this appeal a few facts about the nature of employment and the previous history of the fixation of basic earnings of the weavers in the respondent's Mills on which the payment is made to the Line Mistries.

2. In the Weaving Department of the respondent's Mills a number of looms are divided into lines, each line having 52 to 56 looms. It appears that there was in existence, prior to the dispute, a two-loom system of working for the weavers so that there was one weaver for half the number of looms in a line, and for the whole line there was one line Jobber or Line Mistri. The dispute is in respect of 1 Line Jobbers who work in lines Nos. 3 to 32, the work being done in three shifts. A rationalisation scheme based upon the Sampurnanand Award was introduced which gradually replaced the four-loom system instead of two-loom system and as from May 1, 1965, the four-loom system completely replaced the previous system. It may also be mentioned that the basic earnings of the Line Jobbers are calculated on the basic earnings of the weavers in their respective lines. On the introduction of the new system, there was a dispute between the management and the Line Jobbers in which it was alleged that the management had caused loss in their earnings by changing the method of calculation of their wages on the working of the four-loom system. This dispute was the subject-matter of two References made to the Industrial Tribunal (I) at Allahabad in Adjudication Cases Nos. 57 and 88 of 1966. In these cases ultimately an agreement was arrived at between the parties and the Tribunal made an award in terms of the said agreement. The relevant portion of the award is as follows:

The employer shall calculate the basic earnings of Line Jobbers mentioned in the Annexure with effect from 1st May 1965 till September 30, 1967 at the rate of annas -/3/- or 18 paise of the earnings of the weavers of particular line working on four loom system and pay the difference, if any.

It is the case of the appellants that although the basic earnings were to be calculated for the period from May 1, 1965 to September 30, 1967, there was no indication in the settlement itself that the increased rate shall remain in force only upto September 30, 1967. Prior to this settlement the Mistries were getting basic wage at the rate of 2 annas per rupee of the aggregate wage of the weavers of their line and over and above this the Mistries were getting a payment of 12 1/2 per cent on the earnings so calculated. After the settlement, it is alleged, the management is only paying to the Mistries at the rate of 18 paise per rupee of the earnings of the weavers and has stopped payment of the extra amount of 12 1/2 per cent. It is in respect of this 12 1/2 per cent that another Reference was made which is the subject-matter of this appeal.

3. It is the case of the respondent that prior to the award in the previous Reference there was a complicated method of calculating the basic earnings of Mistries working on four-loom sets and according to this calculation the total basic wage of a Mistri for one fortnight was about Rs. 92.12, and that in order to make the method for working out the total basic wage of Mistries more easy the Industrial Tribunal (I) simplified the calculation keeping in view the addition of 12 1/2 per cent, which was agreed to by the parties on the suggestion of the Industrial Tribunal. According to this agreement a flat rate of 18 paise per rupee of the earnings of weavers was to be calculated for the Mistries which in effect substantially increased their earnings based on four-loom system. It is contended that the agreement filed in Adjudication Cases Nos. 57 and 88 of 1966 cannot be re-agitated.

4. Before dealing with the question which is before us and in order to better understand the issue involved, it is necessary to set out what was the previous basis of calculation of the basic earnings. It appears that in 1947 the U.P. Labour Enquiry Committee headed by Mr. Nimbkar-known as "Nimbkar Committee" gave an interim increase of 12 1/2 per cent on the basic earnings of the workmen working in Textile Mills of Kanpur. The relevant extract from the Nimbkar Committee is reproduced below:

It may be mentioned here that while the proceedings were going on we realised that labour was getting impatient. One of the reasons was the delay in the submission of the report, for which, however, the very comprehensive terms of reference given to us, the delicate nature of the negotiations with the parties concerned, the late submission of the memoranda, particularly on the employers' side, and also our desire to go to the root of the matter, as in the evolution of the Standardization Scheme, were mainly responsible. At the same time, we could not remain indifferent to the urgency of the situation. We, therefore, assisted the Government in securing temporary peace and contentment among the working classes by persuading the employers in almost all industries of the United Provinces to grant an interim

increase of 121/2 per cent on pre-war basic wages. We appreciate the readiness with which they readily yielded to our persuasion.

5. It will be seen from the above extract that the 121/2 per cent interim increase which was recommended for almost all the industries in the United Provinces was based on the pre-war basic wages and this suggestion was accepted by all the parties. In the case of piece rated workers like weavers, as there were large number of piece rates for different qualities of textile production for convenience of calculation, the increase of 121/2 per cent was added up separately for several years to arrive at the basic earnings to which were added Dear Food Allowance etc. Like-wise on the earnings of the Mistries the 121/2 per cent was separately added and that became their basic earnings. Apart from the basic earnings payable to the employees they were also paid Dear Food Allowance and Rs. 8/-. It submitted by the respondent that the wages of the Mistries were, however, worked out and their rates were applied on the total basic earnings of the weavers excluding the said 12 1/2 per cent increase, so as not to give double increase to the Mistries. In July 1952, in the piece rates payable to the weavers the said increase of 121/2 per cent in each of the said rates was merged with the result that the payment to the weavers on the production included the aforesaid 121/2 per cent increase which was therefore not required to be separately calculated. With regard to the Mistries, however, in order to exactly calculate their basic earnings, it became necessary first to arrive at the basic earnings of the weavers by excluding the said 121/2 per cent element which had been merged in their rates, and from the figure arrived at which represented the 1947 basic wages of the weavers the earnings of the Mistries were calculated at their rates and to the amount so arrived, 121/2 per cent was added which became the basic earnings of the Mistries. The calculations of these two systems would facilitate a better understanding and in Annexure A of the Statement of the Case of the respondent, the two systems were illustrated by methods IV, V and VI which are as follows:

IV. Calculation with effect from 1-8-1957 when instead of variable rates between -/1/6 to -/1/10 per rupee payable to Mistries was increased to -/2/- per rupee.

(a) Earnings of all weavers in a particular line ... Rs. 112.50 To eliminate 12 1/2% from the said merged Rs. 112.50 it would be reduced by .89553, therefore weavers earnings would be - Rs. 112.50 x .89553 ... RS. 100.75 _____ 100 (b) Mistry's earnings on Rs. 100.75 @ -/2/- (two annas) per rupee would be (Rs. 100.75 x -/2/- ... Rs. 12.59 Plus 12 1/2% interim increase on Rs. 9.44 ... Rs. 1.57 Total basic earnings of the Mistry ... Rs. 14.16 V. Method followed to calculate the basic earnings of Mistries after switch over to 4 loom system of working

(a) On the same hypothesis the basic earnings of all weavers in a particular line Rs. 84.37, because weavers were paid on 3/4th of their production on 4 looms. Therefore to arrive at what would have been their wages if paid on 2 loom working so that the Mistries rate be applied correctly. 2 Loom earnings 84.37 x 2 - ... Rs. 56.25 _____ 3 The earnings of the line Rs. 56.25 x 2 ... Rs. 112.50 To eliminate 121/2% from the said merged Rs. 112.50 it would be reduced by 89553 therefore weavers earnings would be Rs. 112.50 x .89553 _____ 100 ... Rs. 100.75 (b) Mistry's earnings on Rupees 100.78 -/2/ (two annas) per rupee would be

(Rs. 100.75 x -/2/-) ... Rs. 1259 Plus 12 1/2 % interim increase on Rs. 9.94 ... Rs. 1.57
Total basic earnings of the Mistry ... Rs. 14.16 VI. Calculation of Line Mistries basic earnings as per Award of Indus trial Tribunal at .18 paise per rupee

(a) Basic earnings of all weavers in a particular line ... Rs. 84.37 (b) Mistry's basic earnings on Rs. 84.37 would be 18 paise per rupee (Rs. 84.37 x .18) ... Rs. 15.19 Total basic earnings of the Mistry ... Rs. 15.19 It is, therefore, contended by the respondent that in fact the Line Mistries are getting more than they were getting before when they were paid -/2/-of the basic earnings of the weavers plus 12 1/2 per cent. This is exclusive of the Dear Food Allowance and Rs. 8/- which are being paid even now.

6. Before the Industrial Tribunal the workmen examined one witness S.K. Srivastava and the respondent examined one R.S. Pathak. Referring to the evidence of these two witnesses the Tribunal pointed out that "when the extra payment of 12 1/2 per cent was made to the weavers it was also given to the Line Jobbers, but the wages of the latter were first calculated by excluding 12 1/2 per cent increase on the wages of weavers and after calculating the earnings thus an addition of 12 1/2 per cent was made. This had to be done because obviously the benefit of 12 1/2 per cent increase could not be given to the Mistries twice. The wages of weavers were revised after rationalisation and every weaver who was previously paid the wage for two loom working began to be paid on the basis of three-loom working. However, the number of weavers was reduced to one-half and there was likelihood of the Mistries' wages being reduced, as result of reduction in the number of weavers." In order, therefore, to compensate the Mistries, 12 1/2 per cent increase continued to be given to them which ultimately was superseded by the agreement arrived at in the Award Cases Nos. 57 and 88 of 1966, whereunder the wages of Mistries were increased from two annas per rupee to three annas or 18 paise per rupee. The agreement, however, did not specify that the addition of 12 1/2 per cent would continue to be given on the revised rate of wages to the Mistries. The workmen contend that since the Dear Food Allowance and Rs. 8/- are being paid, this 12 1/2 per cent which is also an allowance should also be paid to them. What has to be considered is what the Line Mistries were getting before the settlement and what they are getting after the settlement. A calculation on the hypothetical basis which has been given by the respondent, which to our mind seems to illustrate two different methods under which the Mistries were being paid actually, would show that the Line Mistries are getting more at the rate of 18 paise per rupee even without the addition of 12 1/2 per cent. It is obvious, therefore, that the agreement between the parties took this into account and the omission to mention 12 1/2 per cent is significant in that it was not intended that a further 12 1/2 per cent was to be added to their basic wages. The statement Ext. E-5 will show that the average increase in the total earnings of Line Jobbers for the month of December 1967 was Rs. 10.83. The Tribunal observed that "Not a single Mistri or Line Jobber has come forward to say that he has suffered in earnings by reason of introduction of the new formula of calculation." The learned Advocate for the appellant, however, stated that the workmen's cause was espoused by the workers' Union and that fact itself is sufficient to show that the Line Mistries had suffered in their earnings. We do not think that there is any substance in this contention, nor is there any warrant for the calculation given by him that before the fourloom system was introduced the Mistries were getting Rs. 204/- per month and after that they (were) getting less.. The workmen's witness admitted in Adjudication Case No. 57 of 1966 that the settlement was made after calculation of the basic earnings of a Line Jobber which

means that the basic earnings of Line Jobbers were calculated and the new rate was fixed assuring that the Line Jobbers were not put to any loss. On this aspect the employer's witness after supporting the calculations given above stated thus:

After the introduction of four-loom working the average wage of a weaver came to about Rs. 72/- to Rs. 80/-. After enforcement of Sampurnanand Award we calculated the wages of four-loom workers according to that award. The earnings of weavers remain more or less the same. Statement Ex. E-4...was prepared by me from the records of the Mill. It is correct and is signed by me. All these calculations were calculated by me Ex. E-5 is an extract of this statement. It is also signed by me and is correct. The earnings of Line Jobbers have increased by calculation @ 18 paise per rupee. Now we pay wages to line Jobbers @ 18 paise per rupee of the wages of weavers without making addition or subtraction either way in the total of weaver's wages. By weaver's wages, I mean the wages paid to them according to the Sampurnanand Award. The wage board increase still stands separately. The 12 1/2 % increase has already been accounted for in weaver's wages, Both the weavers as well as Mistries are getting wage Board increase of (Rs.) 8/- p.m. Again at another place the witness stated:

By increase in the number of looms I mean increase in the number of looms in the mill taken as a whole. Number of looms has been increasing from 40 to 50 and from 50 to 60 in a line. The number of weavers went on increasing with the number of weavers in a line. With the increase of number of weavers in a line, the wages of Line Jobber increased automatically. With the introduction of the system of four-loom working the number of weavers decreased. With the introduction of the new rate of 18 paise per rupee of the wages of weavers, the wage of a line Jobber increased by about Rs. 10/- p.m. The underlying object of all the formulas apply to the wages of line jobbers was that their wages should not decrease.

This latter statement was made in cross-examination and at any rate the statements made by the employer's witness were not seriously challenged in cross-examination and we do not see any ground for interfering with the conclusion arrived at by the Industrial Tribunal which is amply borne out by the materials on record.

7. In this view of the matter, we dismiss this appeal, but in the circumstances, without costs.