

Supreme Court of India

The Workmen vs Otis Elevator Co. (India) Ltd. on 21 October, 1971

Equivalent citations: (1972) ILLJ 166 SC, (1972) 4 SCC 690, 1972 (4) UJ 107 SC

Author: C Vaidialingam

Bench: C Vaidialingam, K Mathew, P J Reddy

JUDGMENT C.A. Vaidialingam, J.

1. These appeals have been filed by the union and the company, challenging the award of the Industrial Tribunal, Delhi, dated March 10, 1969, in I.D. No. 129 of 1966, in so far as they are against them.

2. The major point of dispute in both the appeals between the parties is the one relating to the fixation of wages and dearness allowance.

3. Both the appeals have been argued before us fairly elaborately by Mr. Vimadlal learned Counsel for the company, and Mr. M.K. Ramamurthi. learned Counsel appearing for the union. Both the learned Counsel covered several grounds. At our Suggestion, certain constructive proposals were made by both the counsel, which, in our opinion, should be adopted for the purpose of ensuring industrial peace and good relationship Between the employer and the employees in this concern.

4. As already mentioned, the major point of controversy relates to the fixation of wages and dearness allowance. The demand of the union is for payment of an additional sum of Rs. 60 per month. Mr. Vimadlal, learned Counsel for the company, has made a very generous offer on behalf of the company that the latter is willing to increase the total pay packet by Rs. 50 for a particular period and by Rs. 55 thereafter, as will be indicated later. Mr. Ramamurthi, appearing for the union, has also accepted the said offer in the same spirit, in which it has been made. This increase relates to the five categories of monthly-rated workmen and six categories of daily-rated workmen, as enumerated in para 3 of the award.

5. Though there was some minor points of difference between the parties, they were ultimately ironed out and we have decided to incorporate these agreed suggestions in our judgment and make it an order of the Court. Both the counsel have also expressed their approval of the method by which the increase in wages and the dearness allowance are to be given effect to.

6. In view of the agreed suggestions made by both counsel, from and out of the additional amounts agreed to be given, the following amount will be added to the basic wage, which was being drawn by the different categories of workmen, prior to the award ;

(I) We will first take the six categories of the daily-rated workmen, namely : (1) Unskilled mazdoor ; (2) Semi-skilled helper; (3) Skilled 'B' Jr. fitter/Jr. wireman ; (4) Skilled 'A' fitter wire-man; (5) Highly skilled 'B', and (6) Highly skilled 'A', out of the amount of Rs. 50 or Rs. 55 as the case may be, a sum of Rs. 35, Rs. 30; Rs. 25; Rs. 20; Rs. 15 and Rs. 10 will respectively be added ad hoc to the above workmen in the order mentioned above to the basic wage; without changing the wage scales. The manner in "which the above has to be apportioned is set out in Clause V below.

(II) From and out of the increase agreed to be paid to the five categories of monthly rated workmen, namely; (1) peon, watchman, (2) driver, (3) jr. clerk, typist, telephone operator, (4) jr. steno/ sr. clerk, (5) sr. steno/salesman, they will get an ad hoc increment respectively in their basic salaries of Rs. 35; Rs. 30; Rs. 20; Rs. 15 and Rs. 10 in the order enumerated above. Even in respect of these categories the wage scale is not to be disturbed.

(III) As the total increase in the pay packet that has been agreed to be given by the company to all the above workmen both daily and monthly rated and accepted on behalf of the union, is Rs. 50 from August 1, 1968 to July 30, 1970 and Rs. 55 from August 1, 1970 onwards, a further direction is given as follows :

(IV) (i) From Rs. 50 agreed to be paid from August 1, 1968 to July 30, 1970, after the amounts already specified are drawn as basic wage by each of the category of monthly-rated work-men, the balance to make up the increase of Rs. 50 will be paid as dearness allowance, in addition to what is being paid by the company ; (ii) Similarly from August 1, 1970, after paying the amounts as basic wage to the various categories of monthly-rated workmen as specified aforesaid, the balance to make up the sum of Rs. 55 per month will be paid to these categories as dearness allowance, in addition to what is being paid by the company.

(V) Regarding the daily-rated workmen, it is agreed between counsel that the enhancement or addition to their basic wage will be the figure mentioned earlier in clause I in respect of each category, multiplied by 12 and divided by 13 x 24, Such addition, in respect of categories 1-6, will be approximately Rs. 1.35; 1.15; 0.96 ; 0.77 ; 0.58 and 0.35 respectively. The balance amount to make up Rs. 50 from August 1, 1968 to July 30, 1970 and Rs. 55 from August 1, 1970 onwards, will be added to the dearness allowance in addition to what is now being paid by the company. It will be in the same proportion and according to the same formula as mentioned earlier.

(VI) This Court, by its order dated July 30, 1970 had given a direction to the company to pay a sum of Rs. 720 per person, within a month from that date. We are informed that the said amount has been paid by the company. In paying the balance amount for the period from August 11, 1968 in accordance with the directions given in this judgment, the company will be entitled to deduct the sum of Rs. 720 already paid under the order of this Court dated July 30, 1970.

(VII) The wages and dearness allowance fixed by this judgment as above, and agreed to by both the counsel, will be substituted for that awarded by the Tribunal.

(VIII) The balance amounts due and payable as per this judgment will be paid by the company to the respective workmen within six weeks from today.

We have thus disposed of the points arising for decision regarding wages and dearness allowance in the two appeals filed by the union and the company.

7. In the appeal of the union, two further points arise for consideration : one is regarding the provision contained in the gratuity scheme framed by the Tribunal. In paragraph 31(A)(2) of the

award, it is provided that the employer will pay gratuity to its permanent workmen or their heirs, executors and assigns, 'on voluntary retirement or resignation after fifteen years' continuous service'. It is represented by counsel on both sides that they have agreed that in the said Clause 2, instead of the period of fifteen years' the period of ten years' is to be substituted. In accordance with the agreement of parties, the said clause in the gratuity scheme will stand suitably modified.

8. The second point of dispute, that has been raised in the appeal of the union, relates to the question of grant of privilege leave to the hourly-rated workmen.', arising, under issue No. 4. The claim of the union was that all employees should be entitled to thirty days paid privilege leave for every completed year of service with a right to accumulate the same up to ninety days. It was further claimed that the leave should be given at least in three instalments, if desired by 'the employee and may be prefixed or suffixed to Sundays and holidays.

9. The company opposed the claim for enhancement of leave, that was then prevalent in the company, to any category of workmen. The plea of the company in this regard was that inasmuch as the establishment in Delhi was a servicing and maintenance organisation and the staff employed therein was in connection with this main item of work of the establishment, it will not be possible to grant excessive number of holidays to its workmen. It was further pleaded that the excess number of holidays, if granted, as claimed, will seriously disrupt the work of the organisation. The company further pleaded that other servicing depots located in Delhi were not giving any more leave than what was being granted by the company to its employees at Delhi.

10. The Tribunal, after a consideration of the claims made by the parties in this regard, has dealt with the claims of the staff and of the hourly-rated employees under two different heads. So far as the staff employed in the company was concerned, the Tribunal, after a reference to the provisions of the Delhi Shops and Establishments Act, and other material on record, ultimately has given a direction to the effect that the privilege leave allowable to the staff working in the Delhi office will be the same as that obtaining in Bombay in its office staff, as mentioned in the settlement dated March 1, 1966, Ext. W.1.

11. So far as this part of the award relating to office staff is concerned, there is no appeal by the management. Regarding the hourly-rated workmen at Delhi, the Tribunal has taken into account the practice obtaining, regarding such workmen, at Bombay office of the company, and applied the same to the hourly-rated workmen at Delhi, on the ground that it is reasonable.

12. Mr. Ramamurthi, learned Counsel for the union, has very strenuously attacked this direction contained in the award, making a distinction in the quantum of leave to the two sets of workmen employed in the same establishment, namely one method applied to the staff and another method of leave, applied to the hourly-rated workmen. This, the learned Counsel pointed out, is contrary to the uniform practice that has been adopted by the company itself at Delhi to all its employees, as is seen from annexures D(I) and D(II), filed by the company, along with its written statement, before the Tribunal.

13. Prima facie, this contention of Mr. Ramamurthi may appear to have some force. But as pointed out by Dr. Anand Prakash, learned Counsel for the company, sphere has been a distinction made even by the union in the matter of claim of festival holidays regarding the staff and daily-rated workmen. He further pointed out that in this establishment the daily-rated workmen are eligible to fourteen days' sick leave, though they will otherwise be entitled only to twelve days. That even in respect of festival holidays, he pointed out, the union itself had made a claim regarding daily-rated workmen for enhancing the same from eight to twelve days, though ultimately enhancement has been granted only up to eleven days. This was emphasised by the counsel to show that the union was fully aware that the office staff was enjoying eighteen days as festival holidays; but nevertheless-they claimed for daily-rated workmen only twelve days. Counsel also drew our attention to certain decisions of this Court wherein it has been held that a distinction can be made in the quantum of leave to the clerical staff and the manual workers and that it need not be the same. The counsel further pointed out, that so far as the staff of the company was concerned, there was material placed before the Tribunal, on the basis of which it felt that there was justification for making an increase in the quantum of privilege leave. But, so far as the hourly-rated workmen are concerned, no data or material was placed before the Tribunal by the union to justify the increase as asked for.

14. Though prima facie, as we pointed out earlier, it may appear that slightly different standard has been adopted by the Tribunal in dealing with the question of leave regarding the two categories of workmen in the same establishment, in our opinion, the direction given by the Tribunal regarding the hourly-rated workmen, does not require any modification in the circumstances of this case except, to the extent indicated hereinafter.

15. The Tribunal, as we pointed out earlier, has adopted, so far as the hourly-rated workmen are concerned, the practice obtaining regarding such workmen at Bombay. That . practice, there is no controversy, is on the basis of a settlement, which is on record. It has been now brought to our notice, quite fairly by the learned Counsel for the company, that a further settlement dated April 7, 1970, has been entered into in Bombay, in and by which there is a modification effected in the matter of the quantum of privilege leave; regarding the hourly-rated workmen. We are of the view that the said circumstance can certainly be taken into consideration. If the practice now in force in Bombay office is applied, the quantum of annual leave to daily-rated workmen in Delhi office will have to be worked out on a basis slightly different from the one adopted by the Tribunal. Therefore, the direction given by the Tribunal in the matter of annual leave with regard to the hourly-rated workmen will be deleted and in its place the following shall be substituted :

Hourly-rated workmen in the Delhi office shall be entitled to annual leave with wages in a calendar year in the same manner as is available to the hourly-rated workmen, in the field in the Bombay office, as per the settlement dated April 7, 1970.

The direction regarding leave, given above, in respect of the hourly-rated workmen, will have effect from January 1, 1971.

16. In the result, the award will stand modified as directed above ; and the appeals are disposed of accordingly. Parties will bear their own costs in both the appeals.