MESSRS. BRAHMACHARI RESEARCH INSTITUTE

v.

ITS WORKMEN

1959

October 16

(B. P. SINHA, C.J., P. B. GAJENDRAGADKAR and K. N. WANCHOO, JJ.)

Industrial Dispute—Retrenchment compensation—Gratuity scheme for cases of retrenchment—Award by Tribunal—Whether gratuity under award different from retrenchment compensation—Claim by retrenched workmen for both gratuity and statutory compensation—Industrial Disputes Act, 1947 (14 of 1947), ss. 2(oo), 25F, 25J.

The retrenched workmen of the appellant concern who were paid compensation as provided in s. 25F of the Industrial Disputes Act, 1947, claimed that they were entitled to be paid in addition gratuity under the gratuity scheme in force in the appellant concern as modified by the award of the industrial tribunal dated August 18, 1952. The award provided: "The following gratuity scheme shall be for cases of *retrenchment* or termination of service by the company for any reason other than misconduct or for cases of resignation with the consent of the management . . .". The Appellate Tribunal took the view that gratuity provided under the award was different from compensation on retrenchment payable to a workman under s. 25F of the Act.

Held, that on a proper construction of the award the amount payable thereunder to the workmen on retrenchment though called gratuity was really compensation on account of retrenchment as provided under s. 25F of the Act, and that the workmen were only entitled to one or the other, whichever was more advantageous to them in view of s. 25J of the Act.

It was not the intention of the legislature that a workman on retrenchment should get compensation twice, *i.e.*, once under the Act and once again under the scheme in force providing for retrenchment compensation, by whatever name the payment might have been called.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4 of 1958.

Appeal by special leave from the decision dated September 19, 1956, of the Labour Appellate Tribunal of India, Calcutta, in Appeal No. Cal. 235/56.

B. Sen, S. N. Mukherjee and *B. N. Ghose*, for the appellants.

Sukumar Ghose, for the respondents.

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Wanchoo J.

1959. October 16. The Judgment of the Court was delivered by

WANCHOO J.—This appeal is directed against the decision of the Labour Appellate Tribunal of India in an industrial matter. The appellant is a partnership concern carrying on business in the manufacture of pharmaceutical products. There was a gratuity scheme in force in the appellant-concern for a long time. This scheme was modified by an award of the industrial tribunal dated August 18, 1952 (hereinafter called the Award), and since then the modified scheme has been in force. The financial condition of the appellant deteriorated and consequently, it was compelled to retrench a number of workmen. It, therefore, applied to the Appellate Tribunal under s. 22 of the Industrial Disputes (Appellate Tribunal) Act (No. XLVIII of 1950), for permission to retrench 89 workmen. The Appellate Tribunal granted permission for retrenchment of 75 workmen only. Consequently, after obtaining such permission, the appellant retrenched the workmen and paid them compensation as provided in s. 25F of the Industrial Disputes Act, 1947 (hereinafter called the Act). Thereupon a dispute was raised by the retrenched workmen through the union in existence in the appellant-concern for gratuity on retrenchment under the award. This dispute was referred to the Second Industrial Tribunal, West Bengal, on March 23, 1956, for adjudication in the following terms:

> "Whether the seventy-five retrenched employees (as per attached list) are entitled to gratuity in addition to retrenchment benefits ?"

There was another matter included in the reference, but we are not concerned with that in the present appeal. The Industrial Tribunal came to the conclusion that the retrenched workmen were only entitled to relief as provided under s. 25F of the Act and were not entitled to any gratuity under the Award over and above the compensation payable to them under the Act. Then followed an appeal by the workmen to the Appellate Tribunal which was allowed. The Appellate Tribunal held that the workmen were entitled to gratuity

under the Award, as gratuity benefit therein was not a retrenchment benefit. The appellant then applied for special leave to appeal, which was granted; and that is how the matter has come up before us.

The general question has been considered by this Court in *The Indian Hume Pipe Company Limited* v. *Its Workmen* (1), judgment which is being delivered today. As the penultimate paragraph in that judgment shows, special considerations may arise on the terms of agreements or awards in particular cases and it is this aspect which falls to be considered in the present appeal.

The sole question, therefore, for determination in this appeal is whether the retrenched workmen are entitled under the Award to gratuity provided therein in addition to retrenchment benefit under s. 25F of the Act. We may therefore reproduce here the relevant part of the Award, which is in these terms:

> "The following gratuity scheme shall be for cases of *retrenchment* or termination of service by the company for any reason other than misconduct or for cases of resignation with the consent of the management. The gratuity will be paid up to a maximum of 15 months' basic pay at the following rates. The period of service to qualify for the gratuity shall be one year. Consistently with the modification about the maximum qualifying service, the basic pay for the purpose of gratuity shall be the average of the last 12 months' basic pay drawn by the workmen concerned."

Then followed the rates; and it was also provided that no gratuity would be payable before the completion of one year of service and that persons discharged for misconduct would not be entitled to any gratuity. Finally, it was provided that in case of death of an emyloyee, his widow or children or other dependants would be granted gratuity on the above basis.

It will be seen that the Award is a composite scheme providing for what is termed gratuity therein under three conditions, namely, (i) where there is retrenchment, (ii) where there is termination of service for any

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reason other than misconduct, and (iii) where there is resignation with the consent of the management. Though the word "gratuity" has been used to cover all these three cases, it is clear that cases of retrenchment as such are also covered by the Award and payment to workmen retrenched has been called "gratuity". The name given to the payment is, however, not material and it is the nature of the payment that has to be looked into. Now, under this Award, it is obvious that this payment on retrenchment though called gratuity is really nothing more nor less than compensation on account of retrenchment. Further it is obvious from the terms of the Award that a retrenched workman could claim gratuity under the Award only on account of retrenchment and could not claim it under the other two conditions therein. In other words, on a fair and reasonable construction of the Award, what the retrenched workman got is only compensation for retrenchment and not any amount by way of gratuity properly so called.

This brings us to the provisions of the Act with respect to retrenchment. "Retrenchment" is defined under s. 2 (oo) and means "the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include (a) voluntary retirement of the workman; or (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or (c) termination of the service of a workman on the ground of continued ill-health". If this definition is compared with the provisions of the Award, it will be found that the Award provides payment not only for retrenchment as such but also for other termination of service which is specifically excepted from the definition of "retrenchment". Clauses (a) and (b) of s. 2 (oo) are provided in the Award by the words "cases of resignation with the consent of the management". Similarly, clause (c) of s. 2 (oo) is provided for by the words "termination of service by the company for any reason other

than misconduct". It is, therefore, obvious that the Award provides not only for payment on retrenchment but also for payment on termination of service for any reason other than misconduct and on retirement. It is thus a composite scheme; and merely because the payment is called gratuity even where it is payable on account of retrenchment, it cannot be anything other than compensation so far as the part of the Award relating to retrenchment is concerned.

Chapter VA, containing ss. 25F and 25J, with which we are concerned, was added in the Act by Act 43 of 1953, with effect from October 24, 1953. The reason for this addition was that though there were schemes in force in many concerns for payment to workmen on retrenchment, there were many other concerns where no such schemes were in force and the workmen got nothing on retrenchment unless there was an award by a Tribunal. Besides, where schemes were in force or awards were made rates of payment on retrenchment varied. The legislature, therefore, thought it fit by enacting Chapter VA to provide by s. 25F a uniform minimum payment to workmen on retrenchment. This payment was called compensation. Section 25F provides that no workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched without payment of compensation which shall be equivalent to fifteen days' average pay for every completed year of service or any part thereof in excess of six months. Then comes s. 25J, sub-s. (1) whereof provides that the provisions of Chapter VA shall have effect notwithstanding anything inconsistent therewith contained in any other law including standing orders. There is, however, a proviso to sub-s. (1), which says that nothing contained in the Act shall have effect to derogate from any right which a workman has under any award for the time being in operation or any contract with the employer. This clearly means that if by any award or contract a workman is entitled to something more as retrenchment compensation than is provided by s. 25F, the workman will be entitled to get that and the provisions of s. 25F will not derogate

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from that right of the workman, i.e., will not reduce the compensation provided under the award or contract to the level provided under s. 25F. It is obvious that it was not the intention of the legislature that a workman on retrenchment should get compensation twice, i.e., once under the Act and once under the scheme in force providing for retrenchment compensation, by whatever name the payment might have been called. We cannot agree with the Appellate Tribunal that the payment of gratuity in the event of retrenchment has nothing to do with the compensation payable to a workman under s. 25F of the Act. The Appellate Tribunal seems to have been carried away by the word "gratuity" used in the Award and it seems to think that gratuity on retrenchment is something different from compensation on retrenchment. We are of opinion that this is not correct. Whether it is called "gratuity" or "compensation", it is in substance a payment to the workman on account of retrenchment; and if a scheme like the present specifically provides payment for retrenchment as defined in s. 2(oo), we see no justification for compelling that payment twice over, once under s. 25F and again under the scheme in force in the concern. The matter would be different if the scheme in force in any concern or any award provides gratuity which is different in nature from the retrenchment compensation under s. 25F. We also cannot agree with the Appellate Tribunal that this gratuity under the Award in this case is not a retrenchment benefit. We have already analysed the Award above and shown that it deals with three contingencies, and one of them is payment due on retrenchment. On the terms, therefore, of the Award in this case it must be held that gratuity provided therein on retrenchment is nothing more nor less than retrenchment compensation provided under s. 25F of the Act, and the workmen are only entitled to one or the other, whichever is more advantageous to them in view of s. 25J. In the circumstances we are of opinion that the Industrial Tribunal was right in holding that the scheme of the Award in this case providing for gratuity on retrenchment was exacty the same as compensation

provided under s. 25F, and as the provisions of s. 25F are better than the provisions of the Award in respect of retrenchment the workmen would be entitled to compensation provided under s. 25F only, and not both under that section and under the Award. The appellant has already paid the compensation provided under s. 25F; the workmen therefore are not entitled to anything more under the Award. We therefore allow the appeal, set aside the decision of the Appellate Tribunal and restore that of the Industrial Tribunal in this matter. As this question has come up to this Court for the first time, we order the parties to bear their own costs.

Appeal allowed.

THE DUNLOP RUBBER CO. (INDIA) LTD.

v.

WORKMEN AND OTHERS

(B. P. SINHA, C.J., P. B. GAJENDRAGADKAR and K. N. WANCHOO, JJ.)

Industrial Dispute—Company carrying on business all over India—Claim by regional employees for raising of age of retirement and scale of gratuity—Power of Industrial Tribunal—If can modify uniform conditions of service according to prevailing conditions.

The appellant company was an all-India concern and carried on the major part of its business in Calcutta. Its clerical and non-clerical staff in Bombay raised disputes relating to gratuity and age of retirement and contended that the scale of gratuity for both the clerical and non-clerical staff provided by the existing scheme of the company was low and should be raised and that the age of retirement for the clerical staff should be raised from 55 to 60. The company resisted the claim on the ground that the existing scheme having been enforced on the basis of an agreement between the company and the large majority of its staff, both clerical and non-clerical, working in Calcutta, the same could not be changed at the instance of a small minority. The tribunal rejected this contention and raised the age of retirement to 60. It also raised the scale of gratuity and made it uniform for the clerical and non-clerical staff. The appellant reiterated its contention in this Court.

Held, that although it was advisable for an all-India concern to have uniform conditions of service throughout the country, that were not to be lightly changed, industrial adjudication in