1962

September 7.

RAI BAHADUR DIWAN BADRI DAS

v.

THE INDUSTRIAL TRIBUNAL, PUNJAB

(P. B. GAJENDRAGADKAR, K. C. DAS GUPTA and J. R. MUDHOLKAR, JJ.)

Industrial Dispute—Earned leave—Different rules for existing and future employees—Whether discriminatory—Industrial Tribunal—Power to interfere with contract between employer and employee—Indian Factories Act, 1948 (LXIII of 1948), s. 79.

On July 1, 1956, the appellants made a rule that every workman employed on or before that date would be entitled to 30 days leave with wages after working for 11 months and workmen employed after that date would be entitled to earned leave in accordance with the provisions of s.79 of the Indian Factories Act, 1948. The State Government referred for adjudication to the Industrial Tribunal the question whether all the employees should be allowed 30 days earned leave with full wages for every 11 months' service without discrimination. The Tribunal held that all the workmen were entitled to 30 days earned leave without making any distinction between workmen who joined before July 1, 1956, and those who joined subsequently. The appellants contended that they were entitled to fix the terms of employment on which they would employ the workmen and it was open to the workmen to accept those terms or not and the tribunal was not justified in interfering in such a matter.

Held, per Gajendragadkar and Das Gupta, JJ., that the Tribunal was justified in directing the appellants to provide for the same uniform rule as to earned leave for all their employees. The doctrine of absolute freedom of contract had to yield to the higher claims for social justice and had to be regulated. In industrial adjudication no attempt should be made to answer questions in the abstract for evolving any general or inflexible principles. Each dispute has to be decided on its own facts without enlarging the scope of the enquiry. If some principles have to be followed or evolved, care has to be taken not to evolve larger

principles. In order that industrial adjudication should be free from the tyranny of dogmas or the sub-conscious pressure of preconceived notions it is important that the temptation to lay down broad principles should be avoided. Accordingly it is not necessary to decide the broad contention whether industrial adjudication can interfere with the contract between the employers and the employees. In the present case, all the workmen were governed by the same terms and conditions of service, except in regard to earned leave. The discrimination was not based upon any principle and was bound to lead to disaffection amongst the new employees. The financial burden imposed by the award on the employers was slight. The provisions for earned leave in respect of old employees were not unduly generous or extravagant. Earned leave provided for by s.79 Factories Act was the minimum statutory leave. If the appellants thought it necessary to provide for additional earned leave for their old employees, there was no reason why they should not make a similar provision in respect of new employees as well.

Western Indian Automobile Association v. *Industrial Tribunal, Bombay,* A.I.R. 1949 F.C. 112 and *Bharat Bank Ltd.* v. *The Employees of Bharat Bank Ltd.* [1950] S.C.R. 513, referred to.

Per Mudholkar, J.—The Tribunal was not justified in interfering with the rule made by the appellants. It was open to the appellants to grant leave according to s.79 Factories Act, to all the employees but still they did not wish to reduce the leave of 30 days which they were already giving to the old employees. The appellants have put into one category persons who enjoyed the same kind of benefits uptil July 1, 1956, and have put in another category persons who did not enjoy such benefits. All persons in each category were treated alike, and the question of discrimination did not in fact arise. If the State had provided that persons entering its service after a certain date would be governed by a set of conditions which were different and less favourable than those governing the existing servants its action would not be open to an attack under Art. 14 of the Constitution. An identical action of a private employer could also not be regarded as discriminatory. An award made with the intention of promoting social justice must take into consideration the interests of the community. Even if there was discrimination it could not be a perpetual source of bitterness as gradually the old employees would fade out

1962

Rai Bahadur Diwan Badri Das
v.
The Industrial Tribunal, Punjab

till only one category of workers would remain. The facts that the dispute was comparatively of a minor character and that the financial burden imposed on the appellants was small did not entitle the tribunal to alter the contract between the employer and employees. Since the appellant had provided for its new entrants such leave facilities as were recognised by the Factories Act itself as fair, it was not open to the Tribunal to revise the relevant term of the contract.

Budhan v. *State of Bihar*, A.I.R. 1956 S. C. 191, *Khandige Sham Bhat* v. *Agricultural Income Tax Officer*, [1963] 3 S.C.R. 809, *State of M.P.* v. *Gwalior Sugar Co. Ltd.* C.A. Nos. 98 & 99 of 1959, dated 30.11.60, *Ramjilal* v. *Income-tax Officer, Mohindargarh*, (1951) S.C.R. 127, *Sardar Inder Singh* v. *The State of Rajasthan*, (1957) S.C.R. 605 and *Hathisingh Mfg. Co.* v. *Union of India*, A.I R. 1960 S. C. 931 referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 20 of 62.

Appeal by special leave from the award dated September 29, 1960, of the Industrial Tribunal, Punjab, Patiala in reference No. 13 of 1960.

C. K. Daphtary, Solicitor-General of India, Bhagirath Das and *B. P. Maheshewari*, for the appellants.

M. K. Ramamurthi, R. K. Garg, D. P. Singh and *S. C. Aggarwal*, for the respondent No. 2(i).

1962. September 7. The Judgment of Gajendragadkar and Das Gupta, JJ., was delivered by Gajendragadkar, J. Mudholkar J. delivered a dissenting judgment.

Gajendragadkar J.

GAJENDRAGADKAR, J.—This appeal by special leave arises out of an industrial dispute in relation to a comparatively minor demand made againstt the appellants by the respondents—their employeesh but in challenging the validity of the award passed by the Industrial Tribunal in favour of the

respondents on that demand the learned Solicitor-General has raised a general question before us. He contends that in granting the demand made by the respondents, the award has illegitimately and unjustifiably trespassed on the appellants' freedom of contract. The appellants as employers, are entitled to fix the terms of employment on which they would be willing to employ workmen and it is open to the workmen either to accept those terms or not; industrial adjudication should not interfere in such a matter. That is the nature of the general contention which has been raised before us in the present appeal.

The facts leading to the dispute are few and they lie within a very narrow compass. The appellants are the Trustees of the Tribune Press and paper and the Trust is being worked in accordance with the terms of the will executed by Dyal Singh Majithia on June 15, 1895. In carrying out the policy of the Trust, the five appellants have executed a power of Attorney in favour of Mr. R. R. Sharma and the Press is managed and the paper is conducted to carry out the policy laid down by the will.

It appears that before July 1, 1956, for the purposes of leave, the appellants had divided their employees into two categories (1) the Lino-operators and (2) the rest of the workmen in the Press Section; and Rule 57 made provision for leave on the basis of the said classification. The effect of the said rule was that no Press worker other than the lino-operator was entitled to any kind of paid leave although he was given the right to claim 30 days' wages plus dearness allowance payable in January every year if he had worked for 11 Months. In addition, the said press worker was entitled to Quarantine leave on the terms mentioned in Rule 53.

1962

Rai Bahadur Dewan Badri Das v. The Industrial Tribunal, Punjab

Gajendragadkar J.

This position was substantially altered on the July 1, 1956, when the appellants framed a new Rule in respect of earned leave. This rule abolished the two categories of workers on which the earlier rule 57 was based and divided the workers into two categories (i) workers who were employed on or before 1.7.1956 and (ii) those who were employed after 1.7. 1956. In respect of the former category of workmen, the new Rule made the following provision:

> "Subject to the provisions of the Indian Factories Act, 1948, every workman in the service of the Tribune on the 1st July, 1956, will be entitled to 30 days' leave with wages, after having worked for a period of 11 months. This leave shall cease to be earned, when it amounts to 60 days."

In regard to the workmen falling under the latter category, earned leave was to be governed by the provisions of s. 79 of the Indian Factories Act. It is common ground that the provision for earned leave made by the said section is a provision for minimum earned leave which the employer is bound to give: whether or not additional leave should be granted by way of earned leave is a matter within the discretion of the employer. As a result of the new rule, the position was that the employees who had joined the service of the appellants on or before July 1, 1956, were entitled to 30 days' earned leave with wages, whereas those who joined after the said date became entitled to the statutory minimum of 21 days of earned leave.

At the time when this rule came into force there were 94 old employees to whom the rule applied and 27 new employees to them by virtue of the new Rule, s. 79 of the Factories Act was made

applicable. Gradually, new hands have also been employed and to all such new employees s. 79 is applicable. It appears that by its resolution passed on January 8, 1960, the Tribune employees union sent to the Management a charter embodying about 20 demands. Attempts at conciliation were made but they failed and so, on April 4, 1960, eight of the said demands were referred by the Punjab Government to the Industrial Tribunal for its adjudication under s. 10 of the Industrial Disputes Act. One of these demands was in relation to earned leave. The demand was that the employees in the Press Section should be allowed 30 days' earned leave with full wages for every 11 months' service without any discrimination. The Tribunal has allowed this demand and it had held that all workmen of the Press are entitled to 30 days' earned leave without making any distinction between workmen who joined before July 1, 1956, and those who joined subsequently. It is the validity of this award which is questioned before us by the appellants.

The broad and general question raised by the learned Solicitor-General on the basis of the employer's freedom of contract has been frequently raised in industrial adjudication, and it has consistently been held that the said right is now subject to certain principles which have been evolved by industrial adjudication in advancing the cause of social justice. It will be recalled that as early as 1949, it was urged before the Federal Court in *Western India Automobile Association* v. *The Industrial Tribunal Bombay*(1) that the industrial Tribunal had no jurisdiction to direct an employer to reinstate his dismissed employees and the plea made was that such a direction was contrary to the known principles which govern the relationship between master and servant. This contention was negatived by the Federal Court.

(1) A.I.R. 1949 F.C. 112, 120.

1962

Rai Bahadur Diwan Badri Das
v.
The Industrial Tribunal, Punjab

Gajendragadkar J.

Speaking for the Court, Mahajan J. as he then was, observed that the award of the Tribunal may contain provisions for the settlement of a dispute which no Court could order if it was bound by ordinary law, but the Tribunal is not fettered in any way by these limitations. The same plea was again raised before this Court in *The Bharat Bank Ltd., Delhi.* v. *The Employees of The Bharat Bank Ltd., Delhi* (1) and Mukherjea J. as he then was, emphatically rejected it. "Insettling the disputes between the employers and the workmen", observed the learned Judge, "the function of the Tribunal is not confined to administration of justice in accordance with law. It can confer rights and privileges on either party which it considers reasonable and proper, though they may not be within the terms of any existing agreement. It has not merely to interpret or to give effect to the contractual rights and obligations of the parties. It can create new rights and obligations between them which it considers essential for keeping industrial peace." This view has been consistently accepted by industrial adjudication since 1949.

The doctrine of the absolute freedom of contract has thus to yield to the higher claims for social justice. Take, for instance, the case where an employer wants to exercise his right to employ industrial labour on any wages he likes. It is not unlikely that in an economically under-developed country where unemployment looms very large, for Industrial work, employees may be found willing to take employment on terms which do not amount to a minimum basic wage. Industrial adjudication does not recognise the employer's right to employ labour on terms below the terms of minimum basic wage. This, no doubt, is an interference with the employer's

(1) (1950) S.C.R. 459, 513.

right to hire labour, but social justice requires that the right should be controlled. Similarly the right to dismiss an employee is also controlled subject to well recognised limits in order to guarantee security of tenure to industrial employees. In the matter of earned leave, s.79 of the Factories Act prescribes a minimum in regard to establishments to which the Act applies. In the matter of bonus which is not regarded as an item of deferred wages, industrial adjudication has evolved a formula by the working of which employees are entitled to claim bonus. We have referred to these illustration to show how under the impact of the demand of social justice, the doctrine of absolute freedom of contract has been regulated.

It is, however, necessary to add that the general question about the employer's right to manage his own affairs in the best way he chooses cannot be answered in the abstract without reference to the facts and circumstances in regard to which the question is raised. If a general question is posed and an answer must be given to it, the answer would be both yes and no. The right would be recognised and industrial adjudication would not be permitted or would be reluctant to trespass on that right or on the field of management functions unless compelled by over-riding considerations of social justice. The right would not be recognised and would be controlled if social justice and industrial peace require such regulation. That is why we think industrial adjudication always attempts not to answer questions in the abstract in order to evolve any general or inflexible principles. The est course to adopt in dealing with industrial disputes is to consider the facts of the case, the nature of the demand made by employees, the nature of the defence raised by

1962

Rai Bahadur Diwan Badri Das v. The Industrial Tribunal Punjab

Gajendragadkar J.

the employer and decide the dispute without unduly enlarging the scope of the enquiry. If in the decision of the dispute, some principles have to be followed or evolved, that must be done: but care must be taken not to evolve larger principles which would tend to pre-judge issues not directly raised in the case before the Industrial Tribunal. That is why we think we would not be justified in giving any general answer to the broad contention raised by the learned Solicitor-General before us in the present appeal.

The development and growth of industrial law during the last decade presents a close analogy to the development and growth of constitutional law during the same period. In some respects, it is well-know that Art. 19 of the Constitution has guaranteed fundamental rights to individual citizens and at the same time, has provided for the regulation of the said fundamental rights subject to the provisions of cls. (2) to (6) of the said Article. Where a conflict arises between the citizen's fundamental right to hold property and a restriction sought to be imposed upon that right in the interest of the general public, courts take the precaution of confining their decision to the points raised before them and not to lay down unduly broad and general propositions. As in the decision of constitutional questions of this kind, so in industrial adjudication it is always a matter of making a reasonable adjustment between two competing claims. The fundamental right of the individual citizen is guaranteed and its roasonable restriction is permissible in the interest of the general public, so, the claims of the interest of the general public have to be weighed and balanced against the claims of the individual citizen in regard to his fundamental right. So too, in the case of industrial adjudication

the claims of the employer baised on the freedom of contract have to be adjusted with the claims of industrial employees for social justice. The process of making a reasonable adjustment is not always easy, and so, in reaching conclusions in such a matter, it is essential not to decide more than is necessary. If industrial adjudiction purports to lay down broad general principles, it is likely to make its approach in future cases inflexible and that must always be avoided. In order that industrial adjudication should be completely free from the tyranny of dogmas or the sub-conscious pressure of pre-conceived notion, it is of utmost importance that the temptation to lay down broad principles should be avoided. In these matters, there are no absolutes and no formula can be evolved which would invariably give an answer to differernt problems which may be posed in different cases on different facts. Let us, therefore, revert to the facts of this case and decide whether the appellant's attack against the validity of the propriety of the award can be sustained.

In dealing with the narrow dispute presented by this appeal, it is necessary to remember that all the employees of the appellants are governed by the same terms and conditions of service, except in regard to earned leave. It is only in respect of this term and condition of service that a distinction is made between workmen employed on or before 1.7. 56 and those employed after that date. Generally, in the matter of providing leave rules, industrial adjudication prefers to have similar conditions of service in the same industry situated in the same region. There is no evidence adduced in this case in regard to the condition of earned leave prevailing in the comparable industry in this region. But we cannot ignore the fact that this

1962

Rai Bahadur Diwan Badri Das

The Industrial Tribunal, Punjab

Rajendragadkar J.

very concern provides for better facilities of earned leave to a section of its employees when other terms and conditions of service are the same in respect of both the categories of employees. It is not difficult to imagine that the continuance of these two different provisions in the same concern is likely to lead to dissatisfaction and frustration amongst the new employees. It cannot be denied that the existence of industrial peace and harmony and the continuance of the said peace and harmony are relevant factors, but their importance should not be unduly exaggerated. If a frivolous demand is made by the employees and it is accompanied by a threat that non-compliance with the demand would lead to industrial dis-harmony or absence of peace, it would be unreasonable to treat the throst as relevant in deciding the merits of the demand. In this connection, it is necessary to remember that the continuance of harmonious relations between the employer and his employees is treated as relevant by industrial adjudication, because it leads to more production and thereby has a healthy impact on national economy, and so it is necessary that in dealing with several industrial disputes, industrial adjudication has to bear in mind the effect of its decisions on national economy. In their zest to fight for their respective claims, the parties may choose to ignore the demand of national economy, but industrial adjudication cannot. If the demand is plainly frivolous, it has to be rejected whatever the consequences may be. In the present case, the argument that the continuance of two different provisions would lead to dis-harmony cannot, however, be treated as frivolous. It is difficult to understand on what principle the discrimination is based. The only argument urged in support of the discrimination is the employer's right to provide for new terms of service to the new entrants in service. In our

opinion, the validity of this argument cannot be accepted in the circumstances of this case.

Take the case of the wages or dearness allowance which the appellants paid to their employees. Would the appellants be justified in assertion of their right of freedom of contract to offer less favourable terms of wages or dearness allowance to employees who would be employed after a certain date ? If the general point raised by the learned Solicitor-General is upheld without any qnalifications, then it would be open to the employer to fix different wages for different sets of workmen who are doing the same kind of work in his concern. We have rarely come across a case where such a claim has either been made or has been upheld. It is well known that both industrial legislation and industrial adjudication seek to attain similarity or uniformity of terms of service in the same industry existing in the same region, as far as it may be practicable or possible, without doing injustice or harm to any particular employer or a group of employers. That being so, we do not think the Tribunal was in error in holding that in the matter of earned leave, there should be uniformity of conditions of service governing all the employees in the service of the appellants.

There is another aspect of this question to which reference must be made. This is not a case in which the financial liability imposed on the employer by the award when it directed the employer to grant the earned leave of 30 days to all the employees, is very heavy; and so, having regard to the fact that the appellants have been conducting their business in a profitable way and their financial position is distinctly good, no attempt has been made before us, and rightly, to suggest that the burden imposed by the award is beyond their means. It is not disputed that the total annual liability which

1962

Rai Bahadur Dewan Badri Das
v.
The Industrial Tribunal, Punjab

Gajendragadkar J.

may accrue as a result of the award may not exceed Rs. 1,000/-, and it is also common ground that the appellants are a flourishing concern and their net profits which were in the neighbourhood of a lac of rupees in 1949, have shown an upward tendency and have reached almost rupees eight lacs in 1959. That is another factor which has to be borne in mind in dealing with the present dispute.

It is not suggested by the appellants that the provision made by them for earned leave in respect of old employees is unduly generous of extravagant and so, it has become necessary to invoke the provisions of section 79 of the Factories Act in respect of new employees. On the other hand, earned leave provided by s. 79 is the minimum statutory leave to which employees are entitled and if the appellants thought it necessary to provide for additional earned leave to their old employees, there is no reason why they should not make a similar provision in respect of the new employees as well. We ought to add to that on the record, it does appear that the appellants are good employees and they are treating their employees in a liberal manner. It, however, appears that they have brought the present dispute to this Court more for asserting the general principle of the employer's right to fix conditions of service with his new employees than for vindicating any real or substantial grievance against the award which would prejudicially affect their interest. In our opinion, having regard to the nature of the dispute raised in the present appeal and the other relevant facts and circumstances, it cannot be said that the Industrial Tribunal erred in law in directing the appellants to provide for the same uniform rule as to earned leave for all their employees. We are satisfied that the award under appeal cannot be set aside only on the academic or abstract point of law raised by the appellants.

The result is, the appeal fails and is dismissed with costs.

MUDHOLKAR, J.—This is an appeal by special leave from the award of the Industrial Tribunal, Punjab. The appellants before us are the trustees of "The Tribune", Ambala Cantt. and the opposite party to the appeal consists of the workmen of the Tribune through their two unions, one the Tribune Employees' Union and the other the Tribune Workers' Union.

The Trust was founded in Lahore by the late Sardar Dayal Singh Majithia on February 1, 1881. It publishes the newspaper "Tribune". By the will of the founder dated June 15, 1895 the Management of the Tribune was vested in a public trust in September, 1898. After the partition of India the offices of the newspaper had to be shifted from Lahore and they are now located at Ambala. The Trust naturally had to leave the entire machinery and other equipment of the Tribune Trust along with its immovable property in Lahore. The value of that property is stated by the appellants to be Rs. 25 lakhs or so. The Trust was however, able to transfer its bank accounts and Government securities to India a few days before the partition. With the help of these assets it re-established the Tribune Press and office at Ambala and established new machinery at a cost of Rs. 15 lakhs or so. Gradually the Trust has been able to rehabilitate its fortunes. It is not disputed before us that despite the heavy loss entailed by the Trust by reason of being uprooted from Pakistan, the employees quite a number of whom are old employees who were able to migrate to India, have been treated with a great deal of consideration. After the Tribune started making profits the employees are being given bonus every year. Moreover even before the Employees Provident Fund Scheme applicable to newspaper

1962

Rai Bahadur Diwan Badri Das
v.
The Industrial Tribunal, Punjab

Mudholkar J.

industry and even before the scheme of gratuity for all categories of employees were enforced by statute the Tribune had provided for both provident fund and gratuity to its employees. In addition to this it has provided free housing accommodation to its workmen in two colonies, one built in 1955 with the help of subsidy from the Government of India and the other in the year 1958 at a cost of Rs. 6 lakhs. The quarters in the two colonies are provided with modern sanitation. Besides that, there are extensive recreation grounds, lawns etc., in these colonies. Even electricity is supplied free to the employees. Several other amenities are also provided by the Trust. It would thus appear that the welfare of the employees has been kept prominently in mind by the trustees.

Even so, some disputes arose between the management and the employees. Ultimately eight demands made by the employees were referred by the Government of Punjab for adjudication under s. 10(1) of the Industrial Disputes Act, 1947 (14 of 1947) to the Industrial Tribunal, Punjab, Patiala constituted under s.7A of the Act. Four demands were rejected by the Tribunal as having been withdrawn, one was settled amicably and on the remaining three the Tribunal has made its award. One of those three demands is :

> "Whether the employees in the Press Section should be allowed 30 days' earned leave with full wages for every 11 months' service without discrimination ?"

The Tribunal held in favour of the workmen and it is only against this part of the award of the Tribunal that the trustees have come up in appeal before us. Certain facts have to be stated in connection with this demand. The Trust had framed certain rules governing the conditions of service of

its employees. Rule 57 of those rules deals with leave and reads thus :

> "The Lino Operators shall be entitled to 30 days' leave of all description during the course of a calendar year, which will be with pay plus all allowances.
>
> Press employees, other than the Lino-operators may be granted leave by the competent authority from time to time as the authority may determine. Such leave shall be without pay or allowance. They shall, however, be entitled to in the month of January every year to receive a sum amounting to the leave pay plus ordinary dearness allowance for the preceding month of December for the period of 11 months' service or to a proportionate amount for a lesser period. In addition, Press workers will be entitled to quarantine leave on the terms mentioned in Rule 53".

On July 1, 1956 a new rule was framed which reads as follows :

> "(1) Subject to the provisions of the Indian Factories Act, 1948, every workman in the service of the Tribune on the 1st July, 1956, will be entitled to 30 days' leave with wages, after having worked for a period of 11 months. This leave shall cease to be earned, when it amounts to 60 days.
>
> (2) A workman joining the service of the Tribune after the 1st July, 1956 will be entitled to leave, in accordance with the provisions of section 79 of the Indian Factories Act, 1948."

Under the old rule the Lino Operators in the press section were allowed 30 days' leave on full wages

1962

Rai Bahadur Diwan Badri Das
v.
The Industrial Tribunal, Punjab

Madholkar J.

including dearness allowance. The other workers in the press section were, however, allowed not leave with pay, but 30 days' wages in the month of January calculated on the basis of the full wages drawn in the preceding month provided that an employee had served for a period of 11 months till the beginning of the month of January. If he had served for a lesser period he was to be paid proportionately less amount. Bearing in mind the fact that in industries leave, vacation and holidays with pay are regarded as supplemental pay practices (see Collective Bargaining,—principles and Cases by John T. Dunlop and James J. Healy, revised edn., p. 433), in substance even the employees in the press section other than lino operators got the same money equivalent of the leave allowed to lino operators. It may be mentioned that these other press section employees were also entitled to take leave but the rule provided that they will not be paid any pay and allowonces for such leave. That was perfectly reasonable because they got pay in lieu of paid leave for an additional period in the month of January. However, even this slight distinction in the mode of conferring benefits on the two categories of employees was abolished by the new rule which came into force on July 1, 1956, and all employees in the press section upto that date were made eligible for the grant of 30 days' leave with wages after having worked for a period of 11 months. It may be mentioned here that the Factories Act of 1948 provided in s. 79 that every worker who has worked for a period of 240 days or more in a calendar year shall be given at least one days' leave for every 20 days of service. No doubt this was the minimum provided by the Act but since the press section is governed by the Factories Act it was open to the Trust to modify its rules with regard to all employees of this section and grant leave according to the provisions of this

section. There is no prohibition in law against doing so but still it did not wish to revise unfavourably its rules regarding the quantum of leave to its existing employees. It, however, felt that in view of the statutory provision there was no obligation upon it to provide for a longer leave than that laid down in s. 79 of the Factories Act. It was for this reason that it provided that all employees engaged on or after July 1, 1956, will be granted leave according to the provisions of s. 79 of the Factories Act, the idea being that eventually all employees should be governed by the rules. Apparantly, to forestall this consequence the employees contend that the new rule has introduced discrimination. That is why they raised a dispute relating to this matter and it was referred to the Tribunal along with the other disputes they had raised.

The Tribunal, dealing with this matter, has observed as follows :

> "It may be of some importance to note that till 1st July, 1956 the workmen who had entered service before that date and those who had been employed thereafter were in the matter of leave compensation, treated alike. It was on 1st July, 1956 for the first time that the workmen who had been in service before that date were given 30 days' paid leave but for new entrants the number of days of that leave was reduced to that permitted by section 79 of the Factories Act. The Union's contention is that to allow 30 days' earned leave with full wages in an year to a certain group of workmen in Press Section and to deny that benefit to the rest of the workmen of that section simply on the score of their having entered service after 1st July, 1956, is to acknowledge the prominent element of discrimination which has been res-

1962

Rai Bahadur Diwan Bidri Das v. The Industrial Tribunal, Punjab

Mudholkar J.

ponsible for the heart burning, resentment and dissatisfaction of the workmen. It is further urged with emphasis that all workers for the Press Section should in the matter of earned leave be treated equally.

For the long space of seven years even after the Factories Act had come into force the management had continued to treat all workmen of the Press Section alike irrespective of the date of their employment. There is no reason why a distinction of a discriminatory nature and effect be made between the two artificially created sets of workmen belonging to the same section."

It seems to me that the Tribunal's ultimate finding is vitiated by a misconception entertained by it. The first sentence in the above quotation would show that the Tribunal thought that those persons who were employed after July 1, 1956 were treated in the matter of leave on par with those employed before July 1, 1956, "till July 1, 1956" but were sought to be discriminated against only thereafter. It is difficult to understand how persons who were employed after July 1, 1956, could possibly be treated before July 1, 1956, equally with employees who were in service on that day. Apparently it is this confusion in the mind of theTribunal which has influenced its ultimate conclusion. That apart, it is quite clear that what the Trust has done is to put in one category persons who enjoyed in substance the same kind of benefit uptil July 1, 1956 and permit them to enjoy the benefit they had hitherto enjoyed. Then it put in a separate category those persons who could never possibly lay any claim to have enjoyed a similar benefit because they were not its employees till July 1, 1956, and decided that they will get leave only as provided in s. 79 of the Factories Act. All persons in each category are intended to be alike and, therefore the

question of discrimination does not in fact arise. It was, in my opinion, open to the management to offer to the new entrants new terms. When the new entrants entered service accepting the new terms and knowing fully well that one of those terms i. e., the one relating to annual leave was different and less beneficial from the one which obtained in the case of the old employees, it is not reasonable for them now to say that they are being discriminated against.

The Tribunal, however, thinks otherwise. It has held that the Trust, by treating the new entrants less favourably in the matter of leave than its old employees has practised discrimination and that this discrimination has caused heart burning. Presumably, therefore, the Tribunal felt impelled to interfere and direct that the new entrants should be treated in the matter of leave on par with the old employees in order to avoid industrial unrest which may result 'from' heart burning amongst the new entrants.

What we must first consider is whether the existing of heart burning has at all been established in this case. It is said that the continuance of different provisions in the same concern has caused heart burning, dissatisfaction and frustration among the new employees and this would lead to unrest in the industry. For one thing, there is no evidence before us to show that the new employees are making a very serious grievance of the fact that they would get a few days less of leave than the old employees. All that Mr. Ramamurti could point out to us was the statement in the evidence of Som Nath, A. W. 7. that he should also be given 30 days, privilege leave in a year. Merely saying that he should be given privilege leave does not mean that he is harbouring bitterness in his mind. Apart from that it would be extremely unreasonable to take notice of bitterness, if any, in the minds of

1962

Rai Bahadur Diwan Badri Das
v.
The Industrial Tribunal, Punjab

Mudholkar J.

these new employees in regard to this matter because, as already stated, they voluntarily took up employment knowing that they would get less leave than the old employees. Som Nath's statement is no evidence of the fact that there is any heart burning. To say that the very fact that two sets of people are governed by different rules will necessarily lead to heartburning, without establishing anything more, such as inadequacy of the benefit enjoyed by one set will be to ignore that such differences are a matter of common occurrence and no reasonable person is expected to magnify their consequences. It seems to me, further, that the workers as a body did not think much of the distinction between the extent of leave enjoyed by old and new employees because during all the four years while the rule has been in force they raised no protests. No doubt they did ultimately make a protest in the year 1960 when the dispute was referred to the Tribunal. But then, this was not the sole dispute but was one of eight disputes, at least four of which were withdrawn by the Unions, apparently after realising that there was no substance in them. The mere fact that they did not withdraw this dispute would not of itself indicate that they regarded it as of great importance. It may well be that they did not withdraw it in an erroneous belief that anything which is characterised as discrimination will at once earn the sympathy of Industrial Tribunals and the Courts.

Even assuming that that is creating heartburning amongst the employees the question arises whether they have a real grievance. They say that the Trust has discriminated against the new entrants and this is their grievance. In this connection it may be observed that the mere refusal or failure of an employer to treat equally all its employees doing a particular kind of work would not necessarily amount to discrimination. The subject of is-d

crimination has come up for consideration before this Court in a large number of cases in which a complaint has been made that the equality clause of the Constitution, Art. 14, has been violated. This Court has held that it is open to the State to make reasonable classification both as regards persons and as regards things (see in particular *Budhan* v. *State of Bihar*(1) ; *Khandige Sham Bhatt* v. *Agricultural Income-tax Officer* (2); This Court has laid down that a classification made by the State will be reasonable provided that (1) it is founded on an intelligible differentia which distinguishes persons or things that are grouped together from other left out of the group; and (2) that the differentia has a rational relation to the object sought to be achieved by the statute. In the *State of Madhya Pradesh* v. *Gwalior Sugar Co. Ltd.* (4); it has been held that it is permissible to make classification on historical grounds, by putting in one class one set of persons or things and in other all those left out from the first class Court. In *Ramjilal* v. *Income-tax Officer, Mohindargarh*(5) this Court has held that a taxing law may provide that a law imposing a new rate shall not apply to pending proceedings. In other words this Court has upheld the law where one rate of income-tax shall be applicable to persons whose cases were pending for assessment and another rate to persons whose cases were not so pending. Thus, this Court has held as reasonable classification made by reference to difference in time. In *Sardar Inder Singh* v. *The State of Rajasthan* (6) this Court has held that it is open to the legislature to decide the date from which a law should be given operation and that the law made by it cannot be challenged as discriminatory because it

(1) A.I.R. (1955) S.C. 191 (2) (1963) 3 S.C.R. 809.
(3) C A. Nos. 98 & 98 of 1959 decided on November 30, 1960.
(4) [1951] S.C.R. 127. (5) [1957] S.C.R. 605.

1962

Rai Bahadur Diwan Badri Das
v.
The Industrial Tribunal, Punjab

Mudholkar J.

does not apply to prior transactions. Thus in this case also classification made on the basis of difference in time has been upheld. Finally in *Hathising Mfg. Co.* v. *Union of India* (1) this Court has held that there is no discrimination if the law applies generally to all persons who come within its ambit as from the date on which it is made operative. This case likewise accepts that it will not amount to discrimination if one set of persons is treated differently from another by reference to a point of time. It would follow from these decisions that if the State as an employer provided that persons entering its service after a certain date will be governed by a set of condition which will be different and, may be less favourable than those governing the existing entrants that law will not be open to attack under Art. 14 of the Constitution on the ground that it discriminates between one set of employees and another.

In my judgment the principle laid down by this Court that reasonable classification does not amount to discrimination is of general application. Therefore, when an employer's action is challenged before an Industrial Tribunal as discriminatory, the Tribunal will also have to bear it in mind. For if an action cannot be regarded as discriminatory and violative of Art. 14 of the Constitution because it is based on a reasonable classification an identical action of a private employer affecting his employees can also not be regarded as discriminatory. The content and meaning of 'discrimination', wherever the term is used, must necessarily be the same and we cannot adopt one standard for judging whether an action when it emanates from the State, is discriminatory or not and another standard for judging an identical action, when it emanates from a private citizen. Looked at this way, I have no doubt that the Trust has not practised what can in law be regarded as discrimination against its new entrants

(1) A.I.R. 1960 S.C. 931.

by allowing them lesser leave than it has allowed to its old entrants.

I may point out that it is not an unusual thing even in Government service to find new entrants being treated differently in the matter of leave, emoluments etc., from the old entrants. It is a well-known fact that in most of the provinces of India in the year 1932 or 1933 pay scales in various categories of Government service were revised and new scales less favourable than the old ones were introduced. Therefore, a large body of men were performing the same duties as other large body of men but were getting lesser pay than the latter. That happens often, is happening today in several of the recently reorganised States and may happen hereafter also. But merely because new terms of service are less favourable than the old ones, would it be correct to say that there is discrimination between the new entrants and the old entrants?

As already pointed out, it is open to the employer to offer different and even less favourable terms to new entrants and if the new entrants entered service with their eyes wide open they cannot reasonably complain of being discriminated against. Mr. Ramamurthi who appears for the employees, however, contends that it is open to an employee to take up employment on the existing conditions of service and immediately start clamouring for improving his conditions of service. It is sufficient to say that without establishing that there was a change in circumstances subsequent to the time when a workman accepted service a demand for improvement in the conditions of service cannot, with justice, be entertained unless of course the original conditions of service were plainly unfair. Mr. Ramamurthi does not say that the term regarding leave in the rule applicable to the new entrants is unfair in the sense that the

1962

Rai Bahadur Diwan Badri Das
v.
The Industrial Tribunal, Punjab

Mudholkar J.

leave allowed is inadequate. But, Mr. Ramamurthi said that where a service condition causes heart-burning amongst two sections of employees discontent and unrest would be its natural outcome and so it is open to the Tribunal to revise the condition and thus eliminate that discontent. I am unable to accept the argument. No doubt, the provisions of the Industrial Disputes Act are wide enough, like those of other legislative enactments placed on the statute book, for promoting the welfare of the employees to permit an Industrial Tribunal to override the contract between an employer and his employees governing conditions of service of the employees. But it does not follow from this that no sooner a reference of a dispute is made to a Tribunal for adjudication than the contract of service ceases to have any force. The power to interfere with a contract of service can only be resorted to in certain limited circumstances.

As has been pointed out by this Court in *State of Madras* v. *C. P. Sarathy*(1), the adjudication by a Tribunal is only an alternative form of settlement of disputes on a fair and just basis, having regard to the prevailing conditions of the industry. Bearing in mind this principle, it would follow that it is only for securing a fair and just settlement of an industrial dispute that the Tribunal can over-ride the contract between the parties. For deciding what is fair and just, it is not enough for the Tribunal to say that a particular demand be granted for doing social justice. What it must ascertain is whether the grievance is a real one and whether it is of a type of which the employees can justly complain. In *Muir Mills Co., Ltd.* v. *Suti Mills Mazdoor Union, Kanpur* (2) it has been pointed out social justice is a very vague and indeterminate expression and no clear-cut definition can be laid down which will cover all the situations and that the fancy of an

(1) [1953] S.C.R. 334. (2) (1955) 1 S.C.R. 991.

individual adjudicator is not social justice. But, of course, that does not mean that social justice has no place in the settlement of industrial disputes. It is indeed a relevant consideration but it is well to bear in mind that doing social justice in an industrial dispute is not merely doing justice between the employer and the employee. The question of doing anything in the interest of social justice comes in when the State has a social interest in a situation or in an activity because of its repercussions on the community at large. Therefore, when the social interest of the community is involved in a situation or an activity, the interests of all parties who are affected by it have to be borne in mind, the parties being not merely the employers and the employees but also the community at large which includes also the consumers. So, where a direction in an award is sought to be sustained on the ground that it was made with the intention of promoting social justice it must be shown that the adjudicator had borne in mind also the interests of the community. This aspect of the matter has not been borne in mind by the Tribunal and, therefore, the relevant direction in its award cannot be sustained on the ground that it is actuated by the need of promoting social justice.

The ground given by the the Tribunal, as already stated, is that there is discrimination and the existence of the discrimination will be a perpetual source of unrest. Granting, again, that there is discrimination it is difficult to appreciate now it can be a perpetual source of bitterness for, with the efflux of time, the old employees will gradually be fading out till at last there will be left only that category of workers to which the provisions of s. 79 of the Factories Act apply.

1962

Rai Bahadur Diwan Badri Das
v.
The Industrial Tribunal, Punjab

Mudholkar J.

Nor again, do I think the fact that a dispute is comparatively of minor character and that the financial burden entailed on the employer is inconsiderable, a matter which would entitle the Tribunal to alter a contract between an employer and his employees. In fact these factors are not relevant for consideration. If the leave terms offered to new employees were on their face unfair, the mere fact that the employer did not have the capacity to pay would not have been allowed to influence the determination of the issue. I would go further and say that since the Trust has provided for its new entrants such leave facilities as are recognised by the Factories Act itself as fair, it was not open to the Tribunal to revise the relevant term of the contract.

For all these reasons I am of opinion that the appeal must succeed and the award of the Tribunal should be set aside in so far as it refers to the demand made by the employees for grant of the same leave to new entrants as is being granted to old employees.

By Court. In accordance with the opinion, of the majority, the appeal fails and is dismissed with costs.