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November 7

WORKMEN OF BALMER LAWRIE AND CO.

v.

BALMER LAWRIE AND CO.

(P.B. GAJENDRAGADKAR, K.N. WANCHOO AND K.C. DAS GUPTA JJ.)

Industrial Dispute—Clerical and subordinate staff—Age of retirement—Reduction of grades—Wage structure—Conditions for re-examination—Revision of wage scales—Principles—Res judicata—*Applicability—Comparable character of industrial undertakings*

Industrial disputes arose between the respondent and its employees the appellants. The appellants demanded the reduction of the existing five grades into two grades, increase in the scales of pay, privilege and medical leave and increase of the existing age of retirement which was 55. The Tribunal rejected all the demands of the appellants, but allowed an increase of Rs. 10 in the initial salary of all grades. In appeal by special leave:

Held: The age of retirement in case of the respondent's workmen should be increased to 58. Time has now come for increasing the age of retirement in the case of clerical staff and subordinate staff generally from 55 to 58.

Guest, Keen Williams Private Ltd. v. *P.J. Sterling,* (1960.) 1 S.C.R. 348 and *Workmen of M/s. Jessop & Co. Ltd.* v. *M/s Jessop & Co.*, [1964] I.L.L.J. 451 1961, followed.

(*ii*) In the present case having regard to the genesis and the manner in which these grades have functioned since 1949, it is not necessary to make any adjustments in the grades by reducing their number.

(*iii*) The question as to the revision of wage scales must be examined on the merits in each individual case. Technical considerations of *res judicata* should not be allowed to hamper the discretion of industrial adjudication. The principle of gradual advance towards the living wage which industrial adjudication can never ignore, itself constitutes such a special feature of industrial adjudication that it renders the application of the technical rule of *res judicata* singularly in appropriate. If the paying capacity of the employer increases or the cost of living index shows an upward trend, or there are other anomalies, mistakes, or errors in the award fixing wage structure, or there has been a rise in the wage structure in comparable industries in the region, industrial employees would be justified in making a claim for the re-examination of the wage structure and if such a claim is referred for industrial adjudication, the Adjudicator would not normally be justified in rejecting it solely on the ground that enough time has not passed after the making of the award, or that material change in

relevant circumstances had not been proved. It is, of course not possible to lay down any hard and fast rule in the matter. The question must be examined on the merits in each case.

Burn & Co. Ltd. v. *Their Workmen* (1959) 1 L.L.J. 450 and *James Finlay & Co. Ltd. Employees Union, Calcutta* v. *M/s. James Finlay & Co. Ltd. Calcutta*, 1957 L.A.C. 154, referred to.

In dealing with industrial matters, industrial adjudication should not normally encourage technical pleas and having regard to the fact that cases are conducted before the Tribunal many times by laymen, the significance or the importance of the argument that a particular question is not put to a particular witness should never be exaggerated.

(*iv*) In dealing with the comparable character of industrial undertaking, industrial adjudication does not normally rely on oral evidence alone. This question is considered in the light of material facts and circumstances which are generally proved by documentary evidence. The total capital invested by the concern, the profits made by the concern the dividends paid, the number of employees, the standing of the concern in the industry, these and other matters have to be examined in determining whether one concern is comparable with another in the matter of fixing wage, and these questions cannot be decided merely on the interested testimony of either the workmen or the employer and his witnesses.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 820 of 1962.

Appeal by special leave from the award dated June 29, 1961, of the First Industrial Tribunal, West Bengal in Case No. VIII-608 of 1960.

P.K. Sanyal and *P.K. Mukherjee*, for the appellants.

B. Sen, *S. Ghosh* and *B.N. Ghosh*, for the respondent No. 1.

November 7, 1963. The Judgment of the Court was delivered by

Gajendragadkar J.

GAJENDRAGADKAR J.—An industrial dispute between the respondent, M/s Balmer Lawrie & Co., and its employees, the appellants, has given rise to the present appeal by special leave. The dispute related to four demands made by the appellants and it was referred for adjudication by the Government of West Bengal to the Industrial Tribunal constituted under section 7A of the Industrial Disputes Act, 1947. These demands were: grades

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and scales of pay, privilege leave, medical leave and retiring age. In regard to the claim of the appellants for reducing the existing five grades into two grades organised on a rational and scientific basis, the Tribunal held that, on the whole, the grades seemed to function satisfactorily, and so, no case had been made out for their amalgamation. The demand for increase in the scales of pay was substantially rejected by the Tribunal, but it held that the appellants should be given some relief by increasing the initial salary of all the grades by Rs. 10. The claims for privilege leave and medical leave were rejected by the Tribunal; it held that the mere fact that two concerns in the neighbourhood had agreed to give more than 21 days' privilege leave, was no justification for changing the present rule as to privilege leave which governed the appellants, and as to medical leave, the Tribunal held that the construction which the respondent was placing on the relevant rule contained in Exbt. F was inadmissible, and so, there was no necessity for introducing any rule that the production of a medical certificate from any medical practitioner should suffice. The Tribunal then examined the appellants' claim as to the retirement age and it held that the existing age of retirement which was at 55 needed no change. An award was accordingly passed in the light of the findings recorded by the Tribunal on the four demands made by the appellants. It is this award which is challenged by the appellants before us.

In respect of the age of retirement, the approach adopted by the Tribunal appears to be unsatisfactory. This question has been considered by this Court on several occasions. In *Guest, Keen, Williams Private Ltd.* v. *P.J. Sterling & Ors.*[1] this Court has discussed in a general way the considerations which are relevant and material in determining a proper age for superannuation in industrial employments. As has been observed by this Court recently in the case of *Workmen of M/s Jessop & Co. Ltd.* v. *M/s Jessop & Co. & Ors.*[2]

(1) [1960] 1 S.C.R. 348. (2) [1964] 1 L.L.J. 451.

we feel that the time has now come for increasing the age of retirement in the case of clerical staff and the subordinate staff generally from 55 to 58. It appears that the attention of the Tribunal was not drawn to the relevant decisions of this Court; otherwise, the Tribunal would not have rejected the appellants' claim. In fact, in the present appeal, Mr. Sen for the respondent has agreed that the age of retirement should be increased from 55 to 58. We accordingly reverse the order passed by the Tribunal in that behalf and direct that the age of retirement in the case of the respondent's workmen should be 58 and not 55 as from the date of this judgment.

That takes us to the question about the reduction of the grades from 5 to 2. Mr. Sanyal for the appellants contends that generally two grades are adopted by industrial concerns and he urges that the presence of five grades is both unscientific and inexpedient. It may be conceded that two or three grades are generally adopted by industrial concerns, but in the present case, it is necessary to bear in mind the previous history of the creation of these grades and to take into account the fact that these five grades have, on the whole, satisfactorily functioned in the concern of the respondent. In the award pronounced between the parties, in 1949, these five grades were evolved. Floormen who are mentioned in the award correspond to Grade I which is described as the Sub-grade in the respondent's concern. Then we have the remaining four grades described as Junior Grade, Senior Grade, Section Head Grade and Supervisor Grade. These correspond to the four grades Nos. II, III, IV & V in the respondent's concern. Since 1949, these grades have been maintained by the respondent. That is the genesis of the 5 grades.

It cannot be seriously disputed that the employees working in the Sub-grade which is Grade I are entrusted with a distinctly inferior type of work and they cannot be integrated with Grades II or III. Then as to Grades II and III, it is significant that there is automatic promotion from one to the other

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(Annexure D). This automatic promotion is, of course, subject to the condition that the Clerks concerned have satisfactory service records and it is granted on the clear understanding that they would continue to undertake Grade II duties. It also appears that a Clerk who joined the company in Grade I and was placed in Grade II prior to the abolition of Grade I, or on the date when this Grade was abolished, would be automatically promoted and fitted in the next higher Grade, subject to the conditions mentioned in the rule. Thus, it is clear that between Grades II and III which might have been amalgamated into one Grade, there is automatic promotion. This method has the advantage of enabling the employer to recognise outstanding merit in a Clerk working in the lower grade by promoting him straightaway to the higher grade. The appellants have not suggested that such promotions in recognition of outstanding service and efficiency have never been given, nor have they alleged that they have been given for improper reasons. As to Grades IV and V, they are in the nature of selection grades and the work entrusted to the employees in the two grades is of such a distinctive character that it would be unreasonable to think of amalgamating them into one grade. Therefore, we are satisfied that having regard to the genesis of the five grades which prevailed in the respondent's concern and the manner in which these grades have functioned since 1949, it is not necessary to make any adjustments in the grades by reducing their number. Accordingly, we think the Tribunal was right in refusing to accept the demand of the appellants to reduce the grades from five to two.

The next question to consider is one in regard to the increase in the scales of pay. The Tribunal has rejected this claim on the ground that no material change had been proved in the relevant circumstances since the scales were previously fixed. It appears that when the grades were first determined by an award in 1949, they operated for three years; then a revision

was made in 1952 and another revision was effected in 1955. By these revisions, modification has been made in the maximum salary payable to the employees in the different grades, but the minimum remained unchanged. That is why the Tribunal has made an *ad hoc* addition of Rs. 10 to the minimum salary in the respective grades. The Tribunal thought that this modification would meet the ends of justice. The other reason given by the Tribunal for rejecting the claim is that the plea of the high increase in the cost of living on which the appellants relied was not valid, because dearness allowance was paid to the appellants under the Bengal Chambers of Commerce Formula and that, the Tribunal thought, answered the appellants' contention about the rise in the cost of living. The appellants also relied on an agreement between the parties and urged that by virtue of the said agreement, they were entitled to claim a revision of the wage scale, because four comparable concerns in the region had in the meanwhile revised their wage scales. The Tribunal was not impressed by this plea either. It is these findings recorded by the Tribunal that need to be examined in the present appeal.

Taking the first argument that there has been no change in the circumstances, the Tribunal has relied upon two decisions in support of the view that unless a material change in circumstances is proved, there can be no change in the wage structure. In *Burn & Co. Ltd.* v. *Their Workmen & Ors.*(1), this Court has observed that in the absence of anything to show that between 1950 and 1955 when the present industrial dispute was referred for adjudication, circumstances had so altered to make the existing scales of pay and grades unreasonable or inadequate to meet the conditions prevailing at the time the industrial dispute had been referred to the Tribunal, it must be held that any revision of the existing wage-scales or grades was unjustified. Similarly, in *James Finlay & Co. Ltd. Employees' Union, Calcutta* v. *M/s. James*

(1) [1959] 1 L.L.J. 450.

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Finlay & Co. Ltd., Calcutta[1], the Labour Appellate Tribunal observed that though the principles of *res judicata* had no application to adjudication on industrial disputes, on principle, a previous award should not be changed, except on justifiable grounds. The Appellate Tribunal then proceeded to observe that some of the grounds on which the award can be changed are: change of circumstances, principle of gradual advance to the living wage; anomaly, mistake or error in the last award involving hardship to either party or both.

While dealing with the question about the revision of wage scales, it is necessary to remember that the technical considerations of *res judicata* should not be allowed to hamper the discretion of industrial adjudication. It is undoubtedly true that wage scales are devised and wage structures constructed as matters of long-term policy, and so, industrial adjudication would naturally be reluctant to interfere with the wage structures without justification or in a light-hearted manner. When a wage structure is framed, all relevant factors are taken into account and normally it should remain in operation for a fairly long period; but it would be unreasonable to introduce considerations of *res judicata* as such, because for various reasons which constitute the special characteristics of industrial adjudication the said technical considerations would be inadmissible. As the Labour Appellate Tribunal itself has observed, the principle of gradual advance towards the living wage which industrial adjudication can never ignore, itself constitutes such a special feature of industrial adjudication that it renders the application of the technical rule of *res judicata* singularly inappropriate. If the paying capacity of the employer increases or the cost of living shows an upward trend, or there are other anomalies, mistakes or errors in the award fixing wage structure, or there has been a rise in the wage structure in comparable industries in the region, industrial employees would be justified in making a claim for the re-exami-

(1) [1957] L.A.C. 154.

nation of the wage structure and if such a claim is referred for industrial adjudication, the Adjudicator would not normally be justified in rejecting it solely on the ground that enough time has not passed after the making of the award, or that material change in relevant circumstances had not been proved. It is, of course, not possible to lay down any hard and fast rule in the matter. The question as to revision must be examined on the merits in each individual case that is brought before an adjudicator for his adjudication.

Then as to the rise in the cost of living, the Tribunal has no doubt observed that having regard to the fact that dearness allowance is paid to the appellants' under the Bengal Chambers of Commerce formula, the appellants' plea was not valid; but it does not appear that the Tribunal has considered the question as to whether the said forumla affords complete neutralisation to the employees against the rise in the cost of living. We propose to express no opinion on this point, but we are concerned to point out that unless the Tribunal had examined the matter carefully and had come to the definite conclusion that the formula in question gave nearly complete neutralisation against the rise in the cost of living, it would be unreasonable to hold that because the Chamber forumla is adopted by the respondent for payment of dearness allowance to its employees, the complaint of the appellants that there has been a rise in the cost of living and so, their wage structures should be revised, has no substance. This is a matter which has to be carefully examined before any conclusion is reached in a satisfactory way.

That leaves another point to be considered and it has reference to the agreement between the parties on which the appellants relied. In 1955, when by agreement the wage scales were revised, the parties agreed that the pay scales then introduced would remain unchallenged "unless amended by any Mercantile Omnibus Tribunal or any legislation prescribing higher rates of pay, or in the event of any substantial enhancement of scales of pay being effected generally

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in other Mercantile Firms of Balmer Lawrie & Co. Ltd.'s standing, or in the event of any extraneous circumstances arising resulting in a general demand for further enhancement of the scales of pay." The appellants contended that wage scales had been recently revised by the Imperial Tobacco Co. Ltd., Shaw Wallace Co., Voltas Co. and Tata Iron & Steel Co., and in support of this plea, they examined four witnesses who proved the revised scales of wages. The argument was that these concerns are comparable concerns and since there has been a revision of wage scales in these concerns, the appellants were entitled to claim a revision of their wage scales in accordance with the terms of the agreement. After the appellants led their evidence in proof of the fact that the four concerns had revised their pay scales, the respondent examined some witnesses on its behalf. Amongst these witnesses was Kamal Prasad Sircar. In his evidence he mentioned the names of six firms which, according to him, were comparable with the firm of the respondent. Amongst these firms, he did not include any of the four firms referred to by the appellants. The Tribunal took the view that since Sircar was not cross-examined on the question as to whether any of the said four firms are comparable to the respondent's concern, the plea of the appellants that the said firms are comparable must be rejected. In our opinion, the reason given by the Tribunal in rejecting the appellants' claim is wholly unsatisfactory and the approach adopted by it in dealing with this matter inappropriate. In dealing with industrial matters, industrial adjudication should not normally encourage technical pleas and having regard to the fact that the cases are conducted before the Tribunal many times by laymen, the significance or the importance of the argument that a particular question is not put to a particular witness should never be exaggerated. Besides, the Tribunal has overlooked the fact that though evidence was led by the appellants in respect of the four concerns obviously on the ground that they were comparable concerns, Sircar did not positively take the oath that they were not comparable concerns, and so, it would

not be reasonable to make a finding against the appellants on the ground that Sircar was not asked any question about it.

Besides, it is necessary to emphasise that in dealing with the comparable character of industrial undertakings, industrial adjudication does not usually rely on oral evidence alone. This question is considered in the light of material facts and circumstances which are generally proved by documentary evidence. What is the total capital invested by the concern, what is the extent of its business, what is the order of the profits made by the concern, what are the dividends paid, how many employees are employed by the concern, what is its standing in the industry to which it belongs, these and other matters have to be examined by industrial adjudication in determining the question as to whether one concern is comparable with another in the matter of fixing wages. Now, it is obvious that these questions cannot be decided merely on the interested testimony either of the workmen, or of the employer and his witnesses. Unfortunately, the Tribunal has lost sight of this important feature. Therefore, we are satisfied that the Tribunal was in error in refusing to consider the merits of the appellants' claim in regard to the modification and increase in the wage scales.

In regard to the appellants' grievance in respect of privilege leave and medical leave, we see no substance.

The result is, the award rejecting the appellants' claim for modification and revision of the wage scales is set aside and the matter is sent back to the Tribunal for disposal of this issue in accordance with law. Parties would be at liberty to lead additional evidence in support of their respective cases. The order made by the Tribunal giving *ad hoc* increase of Rs. 10 in the initial salaries fixed for different grades is confirmed. The other directions given by the award in respect of the other claims made by the appellants are also confirmed. Having regard to the fact that

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the appellants have succeeded in respect of the retirement age and that an order of remand has been passed by us in their favour for a reconsideration of their claim as to revision of the wage scales, we direct that the respondent should pay the appellants their costs in this Court.

Award partly set aside and case remanded.

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GENERAL MANAGER, BHILAI STEEL PROJECT, BHILAI

v.

STEEL WORKERS' UNION, BHOPAL AND ORS.

(P.B. GAJENDRAGADKAR, K.N. WANCHOO AND K.C. DAS GUPTA JJ.)

Standing Orders— Certification— Jurisdiction of Certifying Officer—The Industrial Employment (Standing Orders) Act, (Act No. 20 of 1946)—The Madhya Pradesh Industrial Workmen (Standing Orders) Act (M.P. Act No. 19 of 1959)—The Madhya Pradesh Industrial Workmen (Standing Orders) Act (M.P. Act No. 26 of 1961) —The Madhya Pradesh Industrial Workmen (Standing Orders) Act (M. P. Act No. 5 of 1962) The Madhya Pradesh General Clauses Act (M.P. Act No. 3 of 1958), s. 25—The C.P. & Berar Industrial Disputes and Settlement Act (No. 22 of 1947).

The appellant submitted for certification draft standing orders on June 9, 1960 to the Certifying Officer under the Industrial Employment (Standing Orders) Act, 1946. The respondents raised an objection that the Certifying Officer had no jurisdiction inasmuch as the Madhya Pradesh Industrial Workmen (Standing Orders) Act, 1959 applied to this industry and the Industrial Employment (Standing Orders) Act, 1946. Overruling this objection the Certifying Officer certified the draft standing orders on August 6, 1962. The respondents appealed to the Industrial Court, Madhya Pradesh which upheld the objection and set aside the order of certification as void, being without jurisdiction. In appeal by special leave: