MANU/MH/0748/2000

Equivalent Citation: 2001(1)BomCR97, [2000(86)FLR223], (2000)IILLJ758Bom

IN THE HIGH COURT OF BOMBAY

O.S.C.J.W.P. No. 462/1997

Decided On: 08.03.2000

Appellants: **Madura Coats Employees Union**
Vs.
Respondent: **G.S. Baj, Member, Industrial Tribunal and Anr.**

Hon'ble Judges/Coram:
F.I. Rebello, J.

Counsels:
For Appellant/Petitioner/Plaintiff: S.C. Naidu, Adv.

For Respondents/Defendant: S.M. Naik, Adv. for Respondent No. 2

Case Note:

Labour and Industrial - allowances - Section 10 of Industrial Disputes Act, 1947 - employees demanded certain allowances - demand for revised wage and dearness allowance scale rejected by Tribunal - Tribunal adjudicated demands on comparable concerns - comparison should be made with similar comparable concerns only - facts regarding comparisons either vague or absent in impugned award - adjudication seem to have been made upon illusory grounds - matter remanded to Tribunal for disposal on merits.

JUDGMENT

F.I. Rebello, J.

1. Petitioner Union by the present petition, has impugned the Award dated June 10, 1996. By the said Award the Industrial Tribunal, Mumbai, decided the reference as referred to it at the instance of the petitioner Union as also the Respondent Company. The Respondent Company had filed Writ Petition No. 1338 of 1997. That petition has been decided today, by a separate order.

2. In passing the award the Industrial Tribunal was pleased to award in favour of the workmen some demands.

3. The Tribunal has allowed privilege leave which reads as under:-

> "The company shall grant 30 working days privilege leave per annum to all the workmen with a right to accumulate the same upto 90 days. If the employee avails 10 days privilege leave in a calendar year he/she shall be eligible for encashment of accumulated PL upto 30 days. The employee shall be eligible to avail PL proportionately during the calendar years.

The Tribunal then observed as under:-

> "On the contrary the workmen will be finally benefited and the tendency to proceed on leave without doing the work will be curtailed. The privilege leave can be enjoyed not merely by actually proceeding on leave, but also by getting the benefits by encashing the same."

Therefore, a part of the demand, which provided that if an employee himself/herself enjoys 10 days PL in a current year, he/she shall be eligible to accumulate the PL upto 30 days has been allowed.

4. The demand as is seen is for the encashment of privilege leave. It does not cast much financial burden on the Company.

5. The next demand which has been allowed is regarding Leave Travel Allowance. The said demand reads as under:-

> "The Company shall pay a leave travel allowance of one month's gross salary per annum to all the workmen."

The Tribunal has allowed the said demand by awarding a sum of Rs. 500/- per annum with effect from 1996 to each employee in addition to Rs. 2000/- in lump sum by way of compensation towards L.T.A. for the past period from 1983 to 1995. This allowance is available to all the workmen. This is one time payment in a year.

6. The third allowance which has been considered is demand No. 12, Educational Allowance. The demand raised by the workmen is as under:-

> "The company shall pay an educational allowance of Rs. 100/- per month to all the workmen."

The Tribunal has allowed this demand and has observed as under:-

> "However, grant of this demand will be restricted to such of the employees who have school or college going children. Union is also intending that the benefits of this demand shall be made available to employees, who are not married or who may not have children."

Thus though the demand of Rs. 100/- per month has been allowed it is restricted to only those who have School or College going children and will not be available to those who have children but who may not be going to School or College. This is not, therefore, something which is available to the employees at large. In para 55 the Tribunal has itself made an interesting observation, that the educational problems of most of the employees might have also come to an end in between 1983 to 1996. It is, therefore, not known as to really, how many of the employees are actually benefited by allowing this demand.

7. The next demand which has been allowed is in respect of Conveyance allowance. The demand reads as under:-

> "The Company shall pay conveyance allowance of Rs. 50/- per month to all the workmen."

This demand has been allowed by the Tribunal by allowing the demand of Rs. 50/- as conveyance allowance, but with prospective effect. For the past period the company has been directed to pay Rs. 1000/- lump sum towards the full and final satisfaction of the demand for the period from 1983 to 1995 to each of the workmen.

8. The next demand which has been allowed is Food Subsidy. The said demand reads as under:-

> "The company shall pay for food subsidy of Rs. 10/- per working day to the workmen till such time the Company is in a position to provide subsidised canteen facilities to all the workmen."

By the settlement of 1980 canteen subsidy @ Rs. 1.50 per full day's attendance except Saturdays was being paid. This has been increased as Rs. 8/- per day. The Tribunal has noted that as on the date of the Award an ordinary rice plate costs more than Rs. 6 to Rs. 7 in a cheapest restaurant. This demand is also granted with prospective effect and is payable only to the workmen who are on duty and not to absentee workmen.

9. The last demand which has been allowed is pertaining to Gratuity. The demand reads as under:-

> "The Company shall pay 30 days wages (basic + D. A.) for every completed year of service by way of gratuity to all the workmen at the time of their leaving the employment."

This demand has been allowed by the Tribunal by observing as under:-

> "Hence, the Award in respect of this demand is to be made accordingly directing the Company to pay 30 days wages (basic 4- D.A.) for every completed year of service by way of gratuity to all the workmen, till such time the total salary is below Rs. 2000/- at the time of their leaving the employment."

At the time of award all employees were drawing salary of more than Rs. 2000/-. Thus allowing of the demand, was purely illusory.

10. Apart from that there is no more demand which has been allowed in respect of a category of workers namely car drivers. What has been considered is an Upcountry allowance. By the Award the Tribunal has awarded Rs. 50/- as Upcountry allowance to drivers, who have to go out upcountry for company's work.

11. Therefore, summarising the demand in so far as workers are concerned which has been allowed is:-

> (1) Encashment of PL which by itself is not a benefit as even otherwise if the workers had gone on leave the salary for the said period would be payable to them.
>
> (2) L.T.C.
>
> (3) Conveyance Allowance.
>
> (4) Food subsidy
>
> (5) The Educational Allowance as noted earlier is only to those employees who have school/college going children and the Tribunal itself has noted that between the years 1983 to 1996 the problem itself may have disappeared. In other words at the time of demand there may be hardly any of the employees who may be having school/college going children. The grant of this demand

today also would be largely illusory.

(6) Gratuity. As pointed out earlier the gratuity as awarded is upto the workers reaching salary of Rs. 2000/-. At the time of the award all the workers had crossed that salary and, therefore, none of the workmen would be actually getting any benefit.

12. The actual figures if worked out for a settlement of a wage demand between 1983 to 1996 i.e. after 13 years will record the true nature of what is awarded.

13. The Tribunal has rejected the demand in so far as Wage structure and D.A. is concerned. In so far as basic wage is concerned, the Tribunal has noted that in the present reference only sale depots at Bombay are concerned. The total number of employees at the time of the reference was about 60. The Union by its demand had sought new time scales and gradation. One of the time scales in respect of one category of workers was either defective or a typographical error and consequently to correct the same the Union by their letter dated May 30, 1987 had sought to reclassify the time scales in terms of the said letter. The Tribunal found great merit in the submission of the Respondent that as no reference has been made in respect of the demands made by letter dated May 30, 1987, on that count alone the demand cannot be agitated and needs to be rejected. The Tribunal has then noted that the basic pay scales cannot be considered in isolation nor adjudicated independently, but will have to be examined in the context of the notice of change given by the company.

14. In so far as D.A. is concerned, the Tribunal noted the scheme as prevailing and the changes as demanded. The Tribunal noted the statutory minimum wage scales for the job prescribed by the Government and that the Company was giving monthly pay more than the minimum wages prescribed for shops and commercial establishments. The Tribunal then noted that the wages of the clerical employees in employment in August 1995 was Rs. 2,600/-This is nearly double that of the minimum wages prescribed under the Act. Dealing with the Company's contention for the need for change in the D.A. pattern the Tribunal has observed that the demand made by either of the parties in respect of the wage scales, classification, dearness allowance are not found justified. If the demands raised by either of the parties is granted, it will have far reaching consequences and will be a premature expression of opinion because 90 percent and above i.e. bulk quantity of the rest of the workmen are not being given any opportunity of being heard. In so far as re-classification is concerned, the Tribunal noted that the demand for change by either of the parties in any manner whatsoever resulting in disturbing the old standing practice and custom cannot be entertained much less, justified as nobody has given the nature of duties of employees and as to why they should be clubbed with those with different occupations when actually they were earlier divided in 10 different grades, which were mutually agreed. In the absence of any demand for re-classification the demand of both the Union and the employer cannot be adjudicated and the parties should opt for an independent reference. The Tribunal then noted that in so far as D.A. is concerned, it cannot be independently adjudicated without reference to the basic pay scales demanded by the Union because the demanded dearness allowance scheme is linked with basic pay and consequently the demand for dearness allowance has been rejected.

15. After rejecting the demand the Tribunal in para 78 has noted as to what are the basic considerations for adjudication of workmen's demands and has listed them as

under:

) the financial capacity of the company;

) comparability of concerns and the service conditions of the workmen; and

) necessity of the workmen to having reached the goal of a living wage.

16. In para 79 the Tribunal has noted that between 1978-79 the net profit of the company which was Rs. 278 lakhs has increased to Rs. 1,612 lakhs in 1992-93 thereby registering an increase of 580 per cent. In so far as gross profit is concerned the Tribunal has noted for the same period an increase from Rs. 314 lakhs to 31,11,120 lakhs registering an increase of 1288 per cent. Other figures have also been set out. The Tribunal has noted that these figures have not been disputed. The Tribunal has then noted that in so far as the demands raised by the Union would result in additional financial burden of Rs. 2,59,260/- and annual burden of Rs. 36,862.50 per employee, in other words about Rs. 310/- per month. The Tribunal then proceeded to hold that the financial position of the company was very sound. That the Award as made by the Tribunal would be an additional burden which the Company would be in a position to bear. In para 80 the Tribunal has noted that the demands granted by the Tribunal are taking into consideration the terms and conditions of service in other comparable concerns. On a perusal of the award I have found no discussion about the comparable concerns.

17. At the hearing of the petition, learned counsel for the petitioner Union has contended that while rejecting the demand of re-classification of pay scales, time scale increments fixation and D. A., the Tribunal has not considered the various tests and the financial burden, though subsequently after rejecting the demands it has made reference thereto for the purpose of sustaining the demands as allowed by the Tribunal. It is contended that while considering the demand for basic wages and D. A. it was duty bound on the Tribunal to apply the tests well known in Industrial adjudication. It is further contended that in so far as the gratuity is concerned, the same is illusory. The benefits to be given to the workmen are only upto the stage where they reach salary of Rs. 2,000/- wherein there is a finding by the Tribunal itself that as of 1995 the workers had gross salary of Rs. 2,600/-. This it is contended, would disclose total non-application of mind on the part of the Tribunal. It is then contended that in so far as educational allowance is concerned, though education allowance of Rs. 100/- has been granted to the workmen, that is only in respect of the employees, who have school or college going children. While granting this the Tribunal was aware of the fact that large number of employees would not be eligible for the said benefits when it has observed that education problems of most of the employees might have also come to an end between 1983 to 1996.

18. On the other hand on behalf of the company, it is contended by the learned Counsel that as rightly held by the Tribunal the demand is by a few workmen stationed at Mumbai. That the Tribunal, therefore, was right in not considering the demand in so far as basic wages and D. A. as that would have effect on the company in respect of its other employees who are 99.7% of the workmen. It is contended that the amount as granted by itself would result in a financial burden on the Company which would be difficult to bear.

19. I have heard the learned Counsel for the petitioner and the respondents. Before considering the arguments, let me refer to some of judgments which have considered cases in respect of all India concerns when a section of employees have raised a

demand. Gainful reference may be made to the judgment of the Apex Court in the case of Dunlop India Ltd. v. Its Workmen and Ors. MANU/SC/0125/1959 : (1959)IILLJ826SC . This is what the Apex Court observed at pp. 827-828:

> "There is no doubt that in the case of All India concern it would be advisable to have uniform conditions of service throughout India and if uniform conditions prevail in any such concern they should not be lightly changed. At the same time it cannot be forgotten that industrial adjudication is based, in this country at least, on what is known as industry-cum-region basis and cases may arise where it may be necessary in following this principle to make changes even where the conditions of service of an all India concern, the Tribunal cannot abstain from seeing that fair conditions of service prevail in the industry with which it is concerned. If therefore any scheme which may be uniformly in force throughout India in the case of an all India concern, appears to be unfair and not in accord with the prevailing conditions in such matters, it would be the duty of the Tribunal to make changes in the scheme to make it fair and bring it into line with the prevailing conditions in such matters, particularly in the region in which the Tribunal is functioning irrespective of the fact that the demand is made by only a small minority of the workmen employed in one place out of the many where the all India concern carries on business."

20. In the case of Workmen of the New Egerton Woollen Mills v. New Egerton Woollen Mitts and Ors., 1969 II LLJ 782, the Apex Court has observed as under at pp. 788-789:

> "In a number of decisions of the Apex Court and of the Industrial Tribunals, it has been laid down that two principal factors which must weigh while fixing or revising wage-scales and grades are: (1) How the wages prevailing in the establishment in question compare with those given to the workmen of similar grade and scale by similar establishments in the same industry or in their absence in similar establishments in other industries in the region, or (2) what wage scales, the establishment in question can pay without any undue strain on its financial resources."

The Apex Court then noted that considering the first question, the Tribunal has first to ascertain whether there are comparable concerns in the same industry in the region. In doing so it has to take into account the extent of business, the capital invested, the profits, the nature of business, the standing, the strength of labour force, the reserves, if any, the dividends paid, the future prospects of the business of concerns put forward before it as comparable and other relevant facts. The Apex Court has observed that obviously there can be no comparison between a small struggling unit and a large flourishing concern of long standing. Where there are no such comparable concerns in the industry in the region, the Tribunal can look into concerns in other industries in the region for comparison but in that case such concerns should be as similar as possible and not disproportionately large or absolutely dissimilar.

21. Award of the Tribunal while rejecting the demand for increase in basic wage and D. A. has not at all addressed itself to these aspects of the matter. It has proceeded totally on a different footing, though it has not the financial position, that has not been considered qua the demand of the workers in so far as the basic wages and D.A. are concerned (sic). It has been merely referred to find out whether the

demands as allowed can be sustained, which to my mind was a total misdirection in answering the reference. The Tribunal could have based on the financial strength of the company, arrived at a conclusion if on facts it was so available that it would be a severe financial burden on the company which it was unable to bear then to reject the demand. This it has not done nor has it taken into consideration the region-cum-industry principle or principle of comparable concerns. All that it has considered is that the Government has fixed minimum wages in that particular employment. In one of the paragraphs it is noted that the demands have been allowed considering comparable units. What are the comparable units and what are the comparable scales or D. A. are not mentioned in the Award nor can this Court find out in fact from the Award as to the comparison that was made.

22. The rejection of the demands in so far as re-classification of grades also discloses total non-application of mind as much as it was both the demand of the Union and the management that the grades be re-classified from a larger number to a smaller number. The Union did supply the material for the need to reclassify, whether the material was sufficient was another matter. The Tribunal thereafter on considering all that material could have rejected the same, but it has not done so and proceeded on the footing that, it could be the subject matter of another reference. The rejection of this demand on this count also cannot be sustained.

23. In so far as the Award of gratuity is concerned, as I have noted above, the same are purely illusory. The Tribunal itself has come to the conclusion that the workers are drawing more than Rs. 2,600/- and, therefore, the award of that demand by putting a fixed salary of Rs. 2,000/- is meaningless and totally devoid of application of mind. The Award to that extent will have to be set aside and remitted back to the Tribunal for considering the same afresh bearing in mind the wages that the workers are drawing at the time of the Award and considering that for the demand to be meaningful it must provide also for future contingencies i.e. increase in pay scale during the pendency of the settlement and the amendments to the Payment of Bonus Act. It is, however made clear that if any benefit has been given that would not be recovered but will be adjusted against any financial benefit in the Award that will be made hereafter.

24. In so far as educational allowance is concerned also, I find on the findings by the Tribunal itself that the same is illusory, apart from the fact that it benefits only a section of the workers. The Tribunal itself has noted that during the pendency of the reference the education problems of most of the employees must have disappeared. Once having so said, to grant the demand without actually knowing how many employees will be benefited was just in the nature of covering a bitter pill with sugar coating to the workmen. Therefore, that has to be set aside and the same is remanded for fresh consideration of the demand. The demand should be made available to all the employees as a whole so that large sections of the work force would be benefited. It is also made clear that the benefit if any taken by any of the employees would not be recovered but would be adjustable against the Award that may be made on remand.

25. In so far as the Award of PL, I do not propose to interfere with the same, as it is only an encashment of PL. In so far as LTC is concerned, I do not propose to interfere with the same. However, considering the fact that the educational allowance has been set aside it will be open to the Tribunal to reconsider the benefits of LTC by increasing it, if possible. Similarly, in so far as the conveyance allowance is concerned, it is for the benefit of the entire workmen. I, therefore, do not propose to

set aside what has already been granted. It is further made clear that it will be open to the Tribunal to consider any increase considering the totality and other factors which are before it on the evidence as already recorded. Similarly, in so far as the food subsidy is concerned, I do not propose to interfere with the same. Insofar as the amount is concerned, again it would be open to the Tribunal to reconsider the amount bearing in mind the total financial burden that the company may have to bear.

26. I have also noted that the reference before the Tribunal has been pending for over 16 years. The Award is mostly with prospective effect and a small portion has been granted in so far as the effect from the date of the reference till the date of the Award i.e. June 10, 1996. I see no reason why because the matter was pending before the Tribunal for long years, the workers should be denied the benefit from the date of the reference. However, while so saying the Tribunal should also bear in mind the financial impact, if any, should not result in severe financial crunch on the company. The Tribunal while passing a fresh award has to bear both the aspects of the matter.

27. Retirement Age: The Union had demanded the age of retirement to be increased from 58 to 60 years. In support it was contended that by virtue of various enacted laws and the prevailing practice in the Bombay Region is that the age of 60 years be the age of retirement. The employer opposed the demand on the ground that the demand is in respect of a few workmen who constituted only 0.44% of the employees work strength. If there is any change that would cause discontent amongst the other employees and as such should be rejected.

28. The Industrial Tribunal has dealt with the said issue and rejected the same without applying the test or considering the material or the practice prevailing in the region. The Tribunal has proceeded on the footing that age of retirement can be revised by an agreement or Award. The Tribunal then proceeded to hold that if the demand is allowed it would have far reaching consequences, including the employer having to bear the burden of paying inefficient employees even after they attain age of 58 years. The demand has not been allowed, but the Tribunal has observed that the management be kind enough to consider the cases of Workmen if they are efficient till they attain the age of 60 years and/or they continue to be efficient whichever is earlier. Thus it appears apparent that the Tribunal on the one hand has rejected the demand and on the other hand has requested the management to consider extension after 58 years upto 60 years for those who are fit and efficient. While answering the demand, the Tribunal is clear that the demand is rejected, but has asked the management to consider the suggestion. This is no answer to the contention raised on behalf of the workmen. Either the demand has to be rejected or granted or granted in a modified form. The Tribunal cannot evade responsibility by asking the management to consider the question of retaining the employees after their reaching 58 years and upto the age of 60 years. Secondly, even if the demand was only by a miniscule number of employees, the Apex Court is clear that the Tribunal can look into the matter considering the practice in the region. In these circumstances the Award in so far as demand No. 18 is concerned has to be set aside and the matter remanded back for reconsideration.

29. Considering the above, the following order and directions:

> The Award dated June 10, 1996 to the extent as stated herein below is quashed and set side and remanded back to the Tribunal for a fresh

consideration:

i) The demand Nos. 1, 2, 3 and 4.

ii) The Award in so far as Demand No. 11 is concerned, is not interfered with. However, it is open to the Tribunal to consider the outer limit bearing in mind the financial burden that will arise on the company.

iii) In so far as Educational allowance is concerned, is quashed and set side as granted, However, it is made clear that those workmen who have availed of it will not be bound to repay the same. However, the said benefit to be adjusted against any other demand that may be Awarded or if paid as a uniform allowance for all considering that even workers have to seek further education to better equip themselves.

iv) The demand in so far as conveyance allowance is concerned, is not interfered with. However, it will be open to the Tribunal to reconsider an increase bearing in mind the financial burden that will be occasioned to the Company.

v) The demand No. 15 as awarded is not being interfered with. However, it will be again open to the Tribunal to consider an increase bearing in mind the financial burden that will be occasioned on the company.

vi) The Award in so far as demand No. 17 is concerned is quashed and set aside. The matter is remanded to the Tribunal for considering the same afresh bearing in mind the actual wages drawn by the workers and likely to be drawn at the time of retirement also considering the time taken for the Award and the amendment to the Payment of Gratuity Act.

vii) The Tribunal to consider the demands from the date of the reference, as the petitioners cannot be faulted if it took 13 years to adjudicate their demands.

viii) The Tribunal to dispose of the Reference based on the existing material within four months from today.

ix) The Tribunal to consider the grant of benefit to those employees who have retired during the pendency of the reference.

x) If the Tribunal discharging the functions is not available then it will be open to the petitioners to apply to the President to assign the matter to any other person to dispose of the matter within the time fixed by this Court.

xi) The non-grant of demand No. 18 is quashed and set aside. The matter is remanded to the Tribunal for considering the demand afresh in the light of the evidence on record and the practice prevailing in the region.

xii) In the circumstances of the case, there shall be no order as to

costs.

Personal Assistant of this Court to issue ordinary copy of this order to the parties.

Issuance of certified copy expedited.