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Court : Chennai

Decided On : Apr-29-1958

Reported in : (1958)IILLJ602Mad

Judge : Rajagopalan, J.

Appellant : Workmen of Lipton, Ltd.

Respondent : Lipton, Ltd.

Judgement :

Rajagopalan, J.

1. Three sets of disputes between the workmen, and the management of the Madras establishment of Lipton (India), Ltd., were referred to the Special Industrial Tribunal, Madras, for adjudication under Section 10(1)(c) of the Industrial Disputes Act. They were registered as I.D. Nos. 8, 9 and 47 of 1956. They were consolidated for disposal and they were disposed of by the tribunal by its award dated 15 October 1956. The workmen represented by their union applied under Article 227 of the Constitution to revise the awards in I.D.No. 8 of 1956 (C.R.P. No. 229 of 1957) and I.D. No. 9 of 1956 (C.R.P. No. 230 of 1957).

2. What was really challenged by the learned Counsel for the petitioners was the correctness of the decision of the tribunal on the following items of dispute between the workmen and the management:

(1) Items 1 and 2 in I.p. No. 9 of 1958-fixation of wages on time-scale for all categories of employees and fixation of dearness allowance.

(2) Items 1 and 5 of I.D. No. 8 of 1956- whether the workers are entitled to any additional bonus for 1953 and if so, to fix the amount; and whether the existing gratuity scheme requires improvement and If so, to what extent.

3. The decision of the tribunal was that the existing scales of wages and dearness allowance did not require any revision. The workmen had been given a month's wages as bonus for 1953. Their claim was for five months' wages as bonus for 1953. The tribunal held that the trading profits of the company left no available surplus to justify the grant of any additional bonus for 1953. In Para. 47 of its award the tribunal recorded its conclusion that the existing scheme of gratuity should be continued, but that it should be extended to all the employees of the company.

4. Virtually the basis for all the conclusions mentioned above was the finding that the financial position of the management did not Justify any increase in its financial commitments to its employees. In Para. 37 of its award the tribunal recorded:

On a careful consideration of the contention of both the parties and the material placed before me I have no doubt in agreeing with the management's case that its present financial position does not warrant either the Increase of scales or the dearness allowance. I should not be understood as Baying that the present scales and dearness allowances are sufficient or satisfactory and do not require improvement. All that I mean to say is that the company cannot be burdened with an additional liability at present and that the employees wait for better days and then put forward their demands.

The petitioners challenged the correctness of that finding.

5. Paragraph 37 of the award dealt expressly with the claims of the workmen for an increase in wages and dearness allowance. One of the contentions of the workmen was that there were no regular time-scales for the wages of the employees. The tribunal pointed out in Para. 14 of its award :

Though the company seems to behaving regular scales of pay from 1 January 1954, they do not seem to have published to their staff and they seem to have been kept in ignorance of this matter. The scales of pay and dearness allowance now in force are as mentioned in Ex. M. 17.

6. I shall deal later with one of the minor contentions of the learned Counsel for the petitioners, that these scales of pay were not actually given effect to in the case of two persons employed as comptometer clerks. The effect of the finding in Para. 37 of the award was that the wage structure in force was left unaltered.

7. To appreciate the contentions of the learned Counsel for the petitioners I have to advert to another feature of the case. Similar disputes about wages and dearness allowance between the management of the same firm and their employees in another State were adjudicated upon by the industrial tribunal at Delhi, and that award Ex. W. 16 was confirmed on appeal by the Labour Appellate Tribunal. The workmen contended that the Delhi award should determine their rights as well. The tribunal rejected that contention in Para. 23 of its award. In the course of the proceedings before the industrial tribunal, Delhi, Mr. Samuel represented the management. In Ex. W. 16 it was recorded that Mr. Samuel (one of the administrative officers of the firm) had expressly admitted that the company was in a position to increase its wage bill by Rs. 5,00,000. In Para. 22 of its award, the industrial tribunal (Special Industrial Tribunal, Madras) accepted the evidence offered by the management, that factually no such concession had been made by Mr. Samuel in the proceedings before the industrial tribunal, Delhi. Mr. Samuel himself was not examined before the industrial tribunal, Madras, on the plea that he was in Pakistan. After referring to the evidence the tribunal recorded in Para. 22 of its award:.I am not prepared to agree ...that this company is in a position to shoulder an additional burden of Rs. 5 lakhs . . . based on the admission in Ex. W. 16.

In deciding that the existing scales of pay and dearness allowance called for no revision the tribunal also took into account some comparable cases of firms in Madras. This was dealt with in Paras. 31 to 33 of the award. The claim of the workmen, that Brooke Bond, Ltd., should be taken as the standard for comparison,

was rejected by the tribunal in Para. 27 of its award.

8. In support of his contention that the findings of the tribunal should be revised the learned Counsel for the petitioners urged:

(1) the tribunal was bound by the award of the Labour Appellate Tribunal in the industrial dispute adjudged by the industrial tribunal, Delhi;

(2) the tribunal was bound to have given effect to the admission of Mr. Samuel in the proceedings before the industrial tribunal at Delhi;

(3) only Brooke Bond, Ltd., was a comparable concern, and that the other concorns referred to by the tribunal did not really present comparable cases; and

(4) in any event, the finding of the tribunal, that there was in existence a time-scale of pay, which covered all the employees of the industrial establishment at Madras, was erroneous.

9. The second and third of these contentions may be disposed of first. They raise no question or any error of jurisdiction or any error in the exercise of the jurisdiction. The tribunal had to appreciate the evidence placed before it and to reach its own conclusions on disputed questions of fact. Whether Mr. Samuel did make an admission in the proceedings before the industrial tribunal at Delhi and whether Brooke Bond, Ltd., was a comparable case were pure questions of fact. The findings of the tribunal on these questions of fact are not open to review in proceedings under Article 227 of the Constitution, I have no hesitation in rejecting what I must characterize as an extreme contention put forward by the learned Counsel for the petitioners, that proceedings under Article 227 of the Constitution should really be equated to an appeal (to the Supreme Court) permitted under Article 136 of the Constitution, It is well settled now that it is a revisional jurisdiction that can be exercised by this Court in proceedings under Article 227 of the Constitution. In exercising that jurisdiction this Court does not convert itself into a Court of' appeal.

10. In D.N. Banerji v. P.R. Mukherjee 1953 I L.L.J. 195 their lordships pointed out:

Whether on the facts of a particular case the dismissal of an employee was wrongful or justified is a question primarily for the tribunal to decide, and here the tribunal held that the dismissals were clear cases of victimization and hence wrongful.

and observed :

Unless there was any grave miscarriage of justice or flagrant violation of law calling for intervention, it is not for the High Court under Articles 226 and 227 of the Constitution to interfere.

11. That despite the non-examination of Mr. Samuel the material on record justified the conclusion, that he did not admit before the industrial tribunal, Delhi, that the management was in a position to shoulder a further financial burden of Rs. 5 lakhs was the conclusion of the tribunal. I am unable to see anything even erroneous in that conclusion. Certainly it does not come within the category of grave miscarriage of justice or flagrant violation of law. There was certainly sufficient material on which that finding of fact could be based, though even sufficiency of material or evidence to support the conclusion of fact may not be a matter for review in proceedings under Article 227 of the Constitution. Similarly, that Brooke Bond, Ltd., was not a comparable case was fully justified by the evidence which the tribunal discussed.

12. In Waryam Singh and Anr. v. Amarnath and Anr. : [1954]1SCR565] their lordships laid down at p. 571:

This power of superintendence conferred by Article 227 is, as pointed out by Harries, C.J., in Dalmia Jain Airway, Ltd. v. Sukumar Mukherjee : AIR1951 Cal193 to be exercised most sparingly and only in appropriate oases in order to keep the subordinate courts within the bounds of their authority and not for correcting mere errors.

(I have italicized the passage.)

13. It may not be necessary to embark upon an examination of all the reported cases in which the scope of Article 227 of the Constitution was discussed. Nor did

the learned Counsel undertake such a task. A fairly full list of all the cases is furnished in In re Annamalai Mudaliar : AIR1953 Mad362 . I have myself held more than once that the scope for interference with findings of fact recorded by a tribunal in proceedings under Article 227 of the Constitution is very little different from that In deciding whether a writ of certiorari should Issue under Article 226 of the Constitution.

14. The second and the third of the contentions put forward by the learned Counsel for the petitioners fail. There is no scope for interference with the findings recorded by the tribunal.

15. It is true that an identical question of the financial capacity of the firm to pay higher wages to its employees was decided in Ex. W. 16, which was confirmed by the Labour Appellate Tribunal. But as the learned Counsel for the petitioners had to recognize, that was not a judgment or award inter partes. The learned Counsel, however, urged that to deny the workmen in the dispute before the industrial tribunal, Madras, the benefit of the finding on an identical question by the Labour Appellate Tribunal constituted denial of justice and that such an error could and should be corrected by me in proceedings under Article 227 of the Constitution. The Delhi award could not conclude the question at issue between the management and its workmen in the industrial establishment at Madras, The Delhi award was only one of the pieces of evidence or material which the Industrial tribunal, Madras, was entitled to consider, and it did take that into consideration. What probative value should be given to that piece of evidence was for the tribunal to decide. It decided in effect not to give it any value, because it felt convinced that the Delhi award was influenced by an alleged admission of Mr. Samuel which in fact had not been made. I am unable to see any error in the conclusion reached by the tribunal, that It was not bound by the terms of the Delhi award in deciding whether the workmen in the industrial establishment at Madras should be awarded higher scales of wages and dearness allowance.

16. The last of the contentions of the learned Counsel for the petitioners was that the decision of the tribunal, that the scales of pay shown in Ex. M. 17 covered all the employees in Madras, was erroneous. In Para. 27 of the statement filed on

behalf of the management before the' tribunal it was claimed that senior clerks and comptometer operators were on the time-scale Rs. 125-8-205. In Ex. M. 22, which showed the wages actually paid to the employees on 31 January 1956, K.V. Subramuniam and Arulappa A. Das were shown as comptometer operators. The further details shown in Ex. M. 22 were that the starting basic salary of Subramanlam was Rs. 55 and that his dearness allowance was Rs. 40. The wages actually paid to Subramaniam on 31 January 1956 were Rs. 85 as basic salary and Rs. 55-4-0 as dearness allowance. In the case of Das the starting basic salary was shown as Rs. 60 and the dearness allowance at Rs. 40. On 31 January 1956 Das was in receipt of a basic salary of Rs. 80 and a dear-ness allowance of Rs. 52. Certainly, these figures were inconsistent with those mentioned in the counter-statement filed by the management. What however was recorded in Ex. M. 17, which it should be remembered the tribunal accepted represented the scales of pay in force, was :

Clerks, typists and comptometer operators: Rs.(i) Grade I ... ... 70-5-130(ii) Grade II ... ... 125-8-205.

The learned Advocate-General, who appeared for the management, explained that the scales of pay for comptometer clerks mentioned in the statement filed by the management referred to the senior comptometer clerks, apparently those In grade II as that class of employees was shown in Ex. M. 17. The learned Advocate-General also pointed out that when M.W. 3 was examined, he categorically stated that there were no senior comptometer operators at Madras. As per Ex. M. 17, comptometer operators of grade I were on the scale Rs. 70-5-130. Exhibit M. 22 showed that the two comptometer operators, Subramaniam and Das, were in receipt of basic salaries of Rs. 85 and Rs. 80 respectively on 31 January 1956. It was certainly well within the time-scale shown in Ex. M. 17. The starting salary shown in Ex. M. 22 which was less than the minimum in the time-scale shown in Ex. M. 17 was what was given to the two employees when they entered service in 1951 and 1952 respectively. The learned Advocate-General referred to the evidence of M.W. 3 which in effect was that the scales of pay shown in Ex. M. 17 were given effect to in January 1954. That explained the pay actually disbursed to these two employees Subramaniam and Das on 31 January 1956, as shown in Ex.

M. 22.

17. It is true that the tribunal did not specifically discuss the question whether the two comptometer clerks Subramaniam and Das were in receipt of salaries within the scope of the time-scale shown in Ex. M. 17. But there is really nothing to show that the special features of these two employees were brought to the notice of the industrial tribunal. Nor is there anything to show that the tribunal was invited to decide with reference to these two employees that the scales of pay shown in Ex. M. 17 had not been applied to them. But even independent of these factors, I have already referred to the evidence on record, which would show that even these two employees were not given anything less than what was due to them on the basis of Ex. M. 17.

18. None of the points taken by the learned Counsel for the petitioners justifies any interference with the award of the industrial tribunal.

19. These petitions fall and are dismissed. No order as to costs.