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M/S. BRITISH PAINTS (INDIA) LTD.

v.

ITS WORKMEN

November 4, 1965

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[P. B. GAJENDRAGADKAR, C.J., K. N. WANCHOO, V. RAMASWAMI AND P. SATYANARAYANA RAJU, JJ.]

Industrial Disputes—Retiring age for workmen—Gratuity—Quantum and minimum years of qualifying service.

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Two matters in dispute between the management of a paints manufacturing company and their workmen, namely: (1) the age of retirement of the workmen and (ii) the introduction of a gratuity scheme for them, were referred to the Industrial Tribunal. Before the reference was made the workmen were entitled to work so long as they were physically and mentally fit. The Tribunal fixed the age of retirement for clerical and subordinate staff at 58 years and for the factory workmen at 55 years. The Tribunal also introduced a gratuity scheme. It fixed 5 years minimum

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service in order to enable a workman to earn gratuity and while fixing 21 days' basic wage or salary as the quantum for gratuity for each completed year of service, included dearness allowance in the words "basic wage or salary."

Both the management and workmen appealed to this Court. The workmen contended that: (i) the age of retirement both for the staff of the head office and the factory workmen should be fixed at 60 years, and (ii) 30 days' wages instead of 21 days should have been fixed as

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the quantum for gratuity. The management objected to the minimum period of five years to enable a workman to earn gratuity even in the case of voluntary retirement or resignation and contended for a longer minimum of service. The management also urged that dearness allowance should not be included in the basic wages for fixing the quantum of gratuity.

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HELD: (i) The award of the Tribunal should be modified, fixing the age of retirement, for the clerical and subordinate staff as well as for the factory-workmen, whether existing or future, at the age of 60 years. [527 E]

Age of retirement of 55 years was fixed in the last century in government service and had become the pattern for fixing the age of retirement everywhere. But considering the improvement in the standard of health and increase in longevity, the age of retirement should be fixed ordinarily

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at the higher level of 60 years. Since the work in the factory in the present case was not particularly arduous as compared to that of the clerical and subordinate staff, even in the case of factory-workmen there is no reason why the age of retirement should be fixed at a lower level, especially when the management could always terminate the services of a workman if he becomes physically or mentally incapable of working, before the age of retirement. With the age of retirement at 60 years there will be the added advantage that more experienced workmen will be

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available to the management and that would be a cause for greater efficiency. As there are no valid and cogent reasons for making a difference in the age of retirement of existing workmen and those employed in future, the future workmen, both clerical and subordinate staff as

well as factory workmen, should also have the benefit of the same age of superannuation. [526 B-D; 527 B-D] A

(ii) No case for increasing the quantum of gratuity from 21 days' basic wage to 30 days' basic wage had been made out by the workmen, especially when there was a provident fund scheme also in force in the concern and the workmen were thus getting two retiring benefits. [529 H]

(iii) In the case of voluntary retirement or resignation by an employee before reaching the age of superannuation, the minimum period of qualifying service for gratuity should be 10 years, and not 5 years as prescribed by the Tribunal. [528 E] B

The reason for providing a longer minimum period of earning gratuity in the case of voluntary retirement or resignation is to see that workmen do not leave one concern after another, after putting in the short minimum service qualifying for gratuity; and gratuity schemes usually provide for a longer minimum in the case of voluntary retirement or resignation. [527 A-B] C

(iv) Gratuity should be paid at the rate of 21 days' basic wage or salary for each completed year of service, but such basic wage would not include dearness or any other allowance. [529 F]

As the gratuity scheme was being introduced for the first time in the concern, it would be proper to follow the usual pattern of fixing the quantum of gratuity on basic wages, excluding dearness allowance, especially when there was another retiring benefit in the shape of provident fund already existing in the concern. [529 E] D

Case law reviewed.

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 246 and 287 of 1965. E

Appeals by special leave from the Award dated March 5, 1964 of the Seventh Industrial Tribunal West Bengal in Case No. VIII-60 of 1963.

M. C. Setalvad, and *D. N. Mukherjee*, for the appellant in (C. A. No. 246/65) and respondent in (C.A. No. 287/65). F

A. S. R. Chari and *B. P. Maheshwari*, for respondent in (C.A. No. 246/65) and appellant in (C.A. No. 287/65).

The Judgment of the Court was delivered by

Wanchoo J. These two appeals by special leave arise from the same award of the Seventh Industrial Tribunal, West Bengal, and will be dealt with together. Two matters in dispute between the management and the workmen were referred to the tribunal relating to (i) the age of retirement of the workmen at the head office and the factory of the company and (ii) the introduction of a gratuity scheme for workmen employed at the head office and the factory. The tribunal fixed the age of retirement for clerical and subordinate staff at 58 years and for workmen in the factory at 55 years. The tribunal also introduced a gratuity scheme after G H

A considering the objections raised to the draft-scheme proposed by the company. Of the two appeals one is by the company relating to the gratuity scheme and the other by the workmen relating to the age of retirement as well as to the gratuity-scheme.

We shall first consider the question of age of retirement. It B may be mentioned that there was no retirement age in force in this company and so the position when the reference was made was that the workmen could continue to work so long as they were physically or mentally fit. The workmen contended that the age of retirement both for the head office and factory workmen should be fixed at 60 years. The company however proposed that the C age of retirement should be 55 years for all workmen. The tribunal as already indicated has fixed the age of retirement at 58 years for clerical and subordinate staff and 55 years for factory-workmen and has apparently relied on the decision of this Court in *Workmen of Jessop & Co. Limited* v. *Jessop and Company Limited*(1).

Now this is a case where there was no age of retirement before D the reference was made and the workmen whether at the head office or at the factory were all entitled to work so long as they were physically or mentally fit. So far as the existing workmen are concerned, we think that the tribunal should have fixed the age of retirement at 60 years both for the factory-workmen as well as head office workmen. It is enough in this connection to refer to E the decision of this Court in *Guest, Keen, Williams (Private) Limited* v. *Sterling (P.J.)*(2) where in a similar situation this Court fixed the age of retirement at 60 years in the case of existing workmen.

Then there is the question as to future workmen and whether F their age of retirement should also be fixed at the same level as in the case of existing workmen. We are of opinion that generally speaking there should not be any difference in the age of retirement of existing workmen and others to be employed in future in a case like the present unless there are special circumstances justifying such difference. In this connection our attention is drawn G to the case of *Guest, Keen, Williams (P) Limited*(2), where the age of retirement of future workmen was 55 years. In that case however the age of retirement of future workmen was fixed at 55 years by the Standing Order and the question whether that age of retirement should be changed was not before this Court for consideration. All that this Court had to consider in that case was H whether the age of retirement of existing employees, before the Standing Order fixing the age of retirement at 55 years was intro-

(1) [1964] I L.L.J. 451. (2) [1960] I S.C.R. 348 : [1959] 2 L.L.J. 405.

duced, should be 60 years or not. In the present company so far there is no age of retirement and unless there are valid and cogent reasons for making a difference in the age of retirement of existing workmen and those employed in future, the future workmen should also have the benefit of the same age of superannuation. A

Considering that there has been a general improvement in the standard of health in this country and also considering that longevity has increased, fixation of age of retirement at 60 years appears to us to be quite reasonable in the present circumstances. Age of retirement at 55 years was fixed in the last century in government service and had become the pattern for fixing the age of retirement everywhere. But time in our opinion has now come considering the improvement in the standard of health and increase in longevity in this country during the last fifty years that the age of retirement should be fixed at a higher level, and we consider that generally speaking in the present circumstances fixing the age of retirement at 60 years would be fair and proper, unless there are special circumstances justifying fixation of a lower age of retirement. B C D

Now so far as the clerical and subordinate staff are concerned, we are of opinion that there is no reason for any difference in the age of retirement as between the existing staff and the future staff. Their work is exactly the same, and in the circumstances there should be the same age of retirement. E

As to the factory workmen, it is urged that their age of retirement should be fixed at a lower level as work in the factory is more arduous than the work of clerical and subordinate staff, and in this connection reliance is placed on the decision of this Court in *Jessop and Company*(1) where one age was fixed for clerical and subordinate staff and a slightly lower age was fixed for the factory-workmen. Here again we are of opinion that generally speaking, there is no reason for making a difference in the age of retirement as between clerical and subordinate staff on the one hand and factory workmen on the other, unless such difference can be justified on cogent and valid grounds. It is only where work in the factory is of a particularly arduous nature that there may be reason for fixing a lower age of retirement for factory workmen as compared to clerical and subordinate staff. This appears to have been so in the case of *Jessop and Company*(1) for that was a heavy engineering concern, where presumably work in the factory was much more arduous as com- F G H

(1) [1964] I L.L.J. 451.

A pared to the work of clerical and subordinate staff. There might therefore have been then some justification for fixing a lower age of retirement for factory workmen in the case of those factories where the work is of a particularly arduous nature. But the present company is a paints manufacturing company and there is in our opinion no reason to suppose that the work in the factory in B the present case is particularly arduous as compared to the work of clerical and subordinate staff. We therefore think that even in the case of future factory-workmen in the present concern there is no special reason why the age of retirement should be fixed at a lower level. It is of course always possible for an employer to terminate the services of a workman if he becomes physically or C mentally incapable of working before the age of retirement. This power being there, there is no reason to suppose that there will be inefficiency in work on account of fixing the age of retirement at 60 years; on the other hand with the age of retirement at 60 years there will be added advantage that more experienced work- D men will be available to the management and that would be a cause for greater efficiency. On the whole therefore we are of opinion that the age of retirement in the case of factory workmen also in the present company should be fixed at the age of 60 years. We therefore modify the award of the tribunal and fix the age of retirement for the clerical and subordinate staff as well E as for the factory-workmen, whether existing or future, at the age of 60 years.

We now turn to the gratuity scheme. Two points have been urged on behalf of the company in this connection. The tribunal has fixed five years minimum service in order to enable a work- F man to earn gratuity. This has been provided in the event of —(a) death of an employee while in service of the company, (b) discharge or voluntary retirement of an employee on grounds of medical unfitness, (c) voluntary retirement or resignation before reaching the age of superannuation, (d) retirement on reaching the age of superannuation, or (e) termination of service by the G company for reasons other than misconduct resulting in loss to the company in money and property. The management objects to the minimum period being five years in the case of voluntary retirement or resignation before reaching the age of superannuation. It is contended that gratuity schemes usually provide for a longer minimum of service in the case of voluntary retirement or H resignation before reaching the age of superannuation. We think that there is substance in this contention. The reason for providing a longer minimum period for earning gratuity in the case of

voluntary retirement or resignation is to see that workmen do not leave one concern after another after putting the short minimum service qualifying for gratuity. A longer minimum in the case of voluntary retirement or resignation makes it more probable that the workmen would stick to the company where they are working. That is why gratuity schemes usually provide for a longer minimum in the case of voluntary retirement or resignation. We may in this connection refer to *the Express Newspapers (Private) Limited* v. *the Union of India*(1) where a short minimum for voluntary retirement or resignation was struck down.

Again in *The Garment Cleaning Works* v. *Its Workmen*(2), 10 years minimum was prescribed to enable an employee to claim gratuity if he resigned.

In *the Management of Wenger and Company* v. *Their workmen*(3), a distinction was made between termination of service by the employer and termination resulting from resignation given by an employee. In the first case the minimum was fixed at 5 years; in the second the minimum period was fixed at 10 years by this Court.

We therefore modify the gratuity scheme in this regard and order that in the case of voluntary retirement or resignation by an employee before reaching the age of superannuation, the minimum period of qualifying service for gratuity should be ten years, and not five years as prescribed by the tribunal.

The next point that has been urged on behalf of the management in this connection is that the tribunal has while fixing 21 days' basic wage or salary as the quantum for gratuity for each completed year of service included dearness allowance in the words "basic wage or salary". It is urged that the usual pattern of gratuity scheme provides for gratuity on basic wages, and dearness allowance generally speaking is not included in basic wages for fixing the quantum of gratuity. It is further urged that by including dearness allowance within the definition of "basic wages or salary" as given in the scheme in this case, the tribunal has really more or less doubled the quantum of gratuity for each completed year of service. There is in our opinion force in this contention also. In *May and Baker (India) Limited* v. *Their workmen*(4), the workmen claimed in this Court that gratuity should be fixed on gross salary. In that case the tribunal had fixed the quantum on basic salary *i.e.* it had not included

(1) [1959] S.C.R.12, at p. 158.
(2) [1962] I S.C.R. 711, 714.
(3) A.I.R. 1964 S.C. 864.
(4) [1961] II L.L.J.

A dearness allowance for this purpose and the reason given by the tribunal for fixing the quantum of gratuity on basic salary was that the workmen in that case were getting double retiring benefit, namely both gratuity and provident fund. That view of the tribunal was upheld by this Court.

B On the other hand, it has been urged that in some cases quantum of gratuity has been fixed on gross salary *i.e.* basic wages plus dearness allowance and in this connection reference was made to *British India Corporation* v. *The Workmen*(1). In that case this Court upheld the award of the tribunal fixing gratuity on the basis of consolidated wages. This Court pointed out that C the usual pattern was to fix quantum of gratuity on the basis of basic wages but refused to interfere in that case because the practice in the concern in that case already existing was to fix gratuity on consolidated wages.

In the present case also there is a provident fund scheme in D force. So with the introduction of the gratuity scheme, the employees will be getting double retiring benefit. In such circumstances we are of opinion that the tribunal should not have defined basic wages so as to include dearness allowance. Besides as the gratuity scheme is being introduced for the first time in this E concern, it would be proper to follow the usual pattern of fixing the quantum of gratuity on basic wages (excluding dearness allowance), especially when there is another retiring benefit in the shape of provident fund already existing in this concern. We therefore modify the award of the tribunal in this respect and order that gratuity should be paid at the rate of 21 days' basic F wages or salary for each completed year of service, and this basic wage will not include dearness allowance or any other allowance. Subject to these modifications, the scheme framed by the tribunal will stand.

The workmen have also assailed the gratuity scheme and their G case is that they should have been granted 30 days' wages as prayed for by them instead of 21 days' basic wages fixed by the tribunal. We do not think there is any case for increasing the quantum of gratuity fixed by the tribunal at 21 days' basic wages as modified by us for each completed year of service, for there is a provident fund scheme also in force in this concern and the H workmen are thus getting two retiring benefits. No other point has been pressed before us.

(1) (1965) Vol. 10 Factory Law Reports 244.

We therefore partly allow the appeal of the company and make the two modifications in the gratuity scheme as indicated above. We also partly allow the appeal of the workmen and fix the retirement age for all workmen—existing or future—clerical, subordinate and factory workmen at 60 years. In the circumstances we make no order as to costs in both the appeals.

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Appeals allowed in part.