to close and permit his rival, who employs perhaps a dozen members of his family, to remain open, clearly places the former at a grave commercial disadvantage. To permit such a distinction might well engender discontent and in the end react upon the relations between employer and employed."

We have, therefore, no hesitation in repelling the attack on the constitutionality of s. 7(1) of the Act. The appeal fails and is dismised.

Appeal dismissed.

IMPERIAL CHEMICAL INDUSTRIES (INDIA) PRIVATE LIMITED

v.

THE WORKMEN

(AND CONNECTED APPEAL)

(P. B. GAJENDRAGADKAR, A. K. SARKAR and K. N. WANCHOO, JJ.)

Industrial Dispute—Award, if can deprive workmen of pre-existing benefits—Age of retirement—Fixation—Relevant considerations—Failure of Tribunal to consider evidence adduced by parties—Duty of Supreme Court.

The workmen of the Imperial Chemical Industries at Bombay claimed, firstly, twice the employee's normal rate of pay for the work done on Sundays and holidays and secondly that all employees of the company shall not compulsorily be retired by the company before they attain the age of 60. The company disputed the demands on the grounds that it had paid Sunday and holiday work allowance in terms of an earlier award, and as no change of circumstances had taken place since the making of the award a revision was not justified; as for the age of retirement as it had fixed the retirement age at 55 for all its employees throughout India, any revision would have repercussion in other branches of the company.

The tribunal partly allowed the claim of the workmen and directed the company to give the employees concerned for work done on Sundays and holidays half a day's total salary and dearness allowance; and for the work done by the employees on

1960

Imperial Chemical Industries (India) Private Limited
v.
The Workmen

festival holiday, a day's salary and dearness allowance, but the employees would not be entitled to a substituted holiday.

The Tribunal in making the distinction between work done on Sundays on the one hand and festival holidays on the other, in effect, placed the workmen in worse position than before the award with respect to the work done on festival holidays and deprived the workmen of their right to a compensatory weekly off or a substituted holiday, and also of a part of the benefits to which they were entitled under the pre-existing arrangement.

Further the Tribunal without taking into consideration the recent trend in Bombay with regard to the age of retirement and an inportant document produced by the workmen in support thereof, which conclusively showed that in Bombay the age of retirement was almost invariably fixed at 60 and not at 55, fixed the age of retirement at 58 years.

Held, that the Tribunal in making an award could not deprive the workmen of the benefits to which they were entitled to under the pre-existing arrangement and place them in a worse position than before the award when the company did not want any change in its favour. In the instant case the allowance in respect of the work done by the employees on festival holidays would continue to be in accordance with the practice prevailing before the present dispute arose.

Held, further, that in fixing the age of retirement no hard and fast rule can be laid down. The decision on the question always depends on a proper assessment of the relevant factors and may conceivably vary from case to case.

In industrial adjudication it is generally recognised that where an employer adopts a fair and reasonable pension scheme that would play an important part in fixing the age of retirement at a comparatively earlier stage. If a retired employee can legitimately look forward to the prospect of earning a pension then the hardship resulting from early compulsory retirement is considerably mitigated: that is why cases where there is a fair and reasonable scheme of pension in vogue would not be comparable or even relevant in dealing with the age of retirement in a concern where there is no such pension scheme.

The recent trend in the Bombay area clearly appears to be to fix the age of retirement at 60. The material facts in the instant case being very similar to the facts in the case of the *Dunlop Rubber Co. (India) Ltd.* v. *Workmen*, the age of retirement of workmen concerned shoud be raised to 60 from 55.

Held, also, that the Supreme Court generally does not like to interfere with the decision of a Tribunal, if it is satisfied that the Tribunal has reached its conclusion after considering the relevant evidence adduced before it; but if in reaching its conclusion the Tribunal loses sight of an important document and fails to take into account evidence adduced before it, it becomes necessary for the Supreme Court to consider whether

it should interfere with the discretion exercised by the Tribunal or not.

The Dunlop Rubber Co. (India) Ltd. v. *Workmen & Ors.* [1960] 2 S.C.R. 51 relied on.

Guest, Keen, Williams Private Ltd. v. *P. J. Sterling & Ors.*, [1960] 1 S.C.R. 348 referred to.

CIVIL APPELLATE JURISDICTION. Civil Appeals Nos. 471 and 472 of 1960.

Appeals by Special Leave from the Award dated the 22nd December, 1959, of the Industrial Tribunal, Bombay, in Reference (I. T. No. 163 of 1959).

M. C. Setalvad, Attorney-General for India, *S. N. Andley, J. B. Dadachanji, Rameshwar Nath* and *P. L. Vohra*, for the Appellant (In C.A. No. 471 and Respondent No. 1 in C. A. No. 1 of 1960).

C. L. Dudhia and *K. L. Hathi*, for the Respondents (In C. A. No. 571 of 60 and Appellants in C. A. No. 472 of 60).

1960. November 14. The Judgment of the Court was delivered by

GAJENDRAGADKAR J.—These two cross appeals are directed against the decision of the Industrial Tribunal in respect of two of the demands referred to it for adjudication. Five industrial demands were made against the Imperial Chemical Industries (India) Private Limited, Bombay (hereafter called the company), by its workmen (hereafter called the workmen), and they were referred for industrial adjudication by the Government of Bombay under s. 10(1) of the Industrial Disputes Act, 1947 (XIV of 1947). These demands were considered by the Industrial Tribunal in the light of the evidence adduced before it by the respective parties and decided on the merits. Two of the demands which are the subject matter of the present appeals were demands Nos. 3 and 5. By demand No. 3 the workmen claimed that for the work done on Sundays and holidays observed by the company clerical as well as service staff shall be paid twice the employee's normal rate of pay consisting of basic salary, dearness allowance and other allowances if

Gajendragadkar J.

1960

Imperial Chemical Industries (India) Private Limited v. The Workmen

Gajendragadkar J.

any. Demand No. 5 made by the workmen was that all employees of the company shall not be compulsorily retired by the company before they attain the age of 60 except in case of voluntary retirement by the employees concerned. The company is an All India concern and has its branches at several places in India. At its Bombay office 1,400 employees are engaged by the company ; out of these 800 employees are concerned with the present dispute; 600 out of them belong to the clerical cadre whereas the remaining 200 belong to the cadre of the subordinate staff.

The two demands set out above were disputed by the company. In regard to demand No. 3 the company stated that it paid Sunday or holiday work allowance in terms of an earlier award known as the Naik Award, and since no change of circumstances had taken place since the making of the said award a revision in the matter of the said payment was not justified. The company further claimed that the allowance paid by it to its employees was reasonable, fair and adequate. In regard to demand No. 5 the company pleaded that since 1950 the company had fixed the retirement age at 55 for all its employees throughout India, and that any revision made in that behalf so far as the employees in the present dispute are concerned would have serious repercussions in the other branches of the company. It was also urged that the age of retirement fixed by the company was fair and reasonable. The company drew attention to the fact that it pays a generous Provident Fund of 10% contribution from either side which does not exist in many others concerns in Bombay.

In regard to demand No. 3 the Tribunal has partly allowed the claim of the workmen and has directed the company to give to the employees concerned, for work done on Sundays and holidays, half of a day's total salary and dearness allowance (calculated by dividing the total of the basic wage, special allowance and dearness allowance for the month by 30). In regard to the work done by the employees on festival holidays the Tribunal has purported to order that the allowance in that behalf should be a day's salary and

dearness allowance calculated as above, but employees will not be entitled to a substituted holiday. It is this part of the award that is challenged by the workmen in their appeal.

In regard to demand No. 5 the Tribunal has taken the view that a case had been made out by the workmen for the revision of the age of retirement fixed by the company and it has held that it would be reasonable to fix the said age of retirement at 58 instead of 55. This direction is challenged by the company in its appeal as well as by the workmen in their appeal. The company contends that no change should have been made in the age of retirement, whereas the workmen urge that the retirement age should have been fixed at 60 instead of 58. Thus Civil Appeal No. 471 of 1960 filed by the company is concerned only with the fixation of the age of retirement, whereas Civil Appeal No. 472 of 1960 which has been filed by the workmen is concerned with the age of retirement as well as the direction issued by the Tribunal in regard to the payment of allowance to the workmen for work done on festival holidays.

In regard to the direction issued by the Tribunal in respect of work done on festival holidays it is obvious that the impugned direction is due to an oversight. We have already pointed out that whereas the workmen wanted a revision of the practice prevailing in regard to the payment of allowances for work done on Sundays and holidays the company wanted the status quo to continue. The payment which the company was making in respect of the said work was in accordance with the Naik Award, and the company's case was that there was no justification for changing the said practice. It is thus obvious that the company did not want any change in its favour and to the detriment of the workmen. It was apparently not realised by the Tribunal that in making a distinction between work done on Sundays on the one hand and work done on festival holidays on the other, and in making two different directions in respect of the said two categories of work, the Tribunal's order in regard

1960

Imperial Chemical Industries (India) Private Limited v. *The Workmen*

Gajendragadkar J.

to the latter category of work would have the effect of placing the workmen in a worse position after the award than before. The relevant direction deprives the workmen of their right to a compensatory weekly off or a substituted holiday, and the inevitable consequence of this direction would be ultimately to deprive the workmen of a part of the benefits to which they are entitled under the pre-existing arrangement. This position cannot be and has not been seriously disputed. Therefore we must uphold the plea raised by Mr. Dudhia on behalf of the workmen and direct that in respect of work done on festival holidays the practice prevailing before the present dispute arose should continue.

Then, as regards the age of retirement, the learned Attorney-General, for the company, has strenuously contended that the Tribunal was in error in changing the age of retirement from 55 to 58. He argues that in dealing with this question two important facts must be borne in mind. The company is an All India concern, and it is of great importance that the terms and conditions of service prevailing in the several branches of the company all over the country should be stabilised and made uniform as far as is reasonably possible, and in the matter of retirement the company has achieved uniformity by fixing the age of retirement at 55 since 1950. This arrangement should not be disturbed because it would inevitably upset the age of retirement, in all other branches. He has also relied on the fact that the general terms and conditions of service provided by the company to its employees are very liberal, and he has made special reference to the Provident Fund which the company has started for the benefit of its employees. Even otherwise, so the argument runs, it cannot be said that it is unreasonable to fix the age of retirement at 55. In support of these contentions he has relied on the decision of this Court in *The Dunlop Rubber Co. (India) Ltd.* v. *Workmen* (1).

On the other hand Mr. Dudhia contends that the decision of this Court in the case of the *Dunlop Company* (1) is in favour of the demand made by the

(1) [1960] 2 S.C.R. 51.

workmen and the Tribunal was in errror in not fixing the age of retirement at 60 applying the principles laid down by this Court in the case of the *Dunlop Company* (1). Besides, he points out that in dealing with the question on the merits the Tribunal has unfortunately failed to consider one important document filed by the workmen along with their statement of the claim (Ex. B). This document would conclusively show that in Bombay the age of retirement is almost invariably fixed at 60 and not at 55.

The question about the age of retirement has been considered by this Court in the case of *Guest, Keen, Williams Private Ltd.* v. *P. J. Sterling* (2). In that case certain general considerations which may be relevant in determining the age of retirement have been dismissed. In the case of the *Dunlop Company* (1) the same considerations were repeated, and it was held that the decision of the Tribunal by which the age of retirement was fixed at 60 should not be interfered with. In the latter case some of the considerations on which the learned Attorney-General has relied were present. The employer was an All India concern and the argument that changing the terms and conditions of service in regard to the age of retirement in one place might unsettle the uniformity and has serious repercussions in other branches was urged and considered by this Court. It was there pointed out that though the consideration relied upon by the employer was relevant and material its effect had to be judged in the light of other material and relevant circumstances, and it was added that one of the important material considerations in this connection would be that the age of retirement can be and often is determined on industry-cum-region basis. It was from this point of view that the Court took into account the fact that in Bombay for some time past there has been a progressive tendency to fix the age of retirement at 60, and if consistently with the said tendency the Tribunal fixed the retirement age at 60 in the case of the *Dunlop Company* (1) this Court saw no reason to take a different view. In our opinion, in so

(1) [1960] 2 S.C.R. 51. (2) [1960] 1 S.C.R. 348.

1960

Imperial Chemical Industries (India) Private Limited v. The Workmen

Gajendragadkar J.

far as the considerations on which the company relies in the present appeal were common to the considerations urged in the case of the *Dunlop Company* (1) the decision in the latter case is more in favour of the workmen than of the company.

It is true that in matters of this kind this Court generally does not like to interfere with the decisions of the Tribunal if it is satisfied that the Tribunal has reached its conclusions after considering the relevant evidence adduced before it. There is no doubt that in fixing the age of retirement no hard and fast rule can be laid down. The decision on the question would always depend on a proper assessment of the relevant factors and may conceivably vary from case to case; but in the present case it seems to us that Mr. Dudhia is right in contending that in reaching its conclusion the Tribunal has somehow lost sight of an important document filed by the workmen along with their claim. This document (Ex. B) shows that out of 13 industrial concerns there set out, in regard to 10 the age of retirement has been fixed at 60 either by an award or by agreement, and that in regard to the remaining 3 there is no age of retirement. The record shows that the facts mentioned in this statement were not disputed before the Tribunal. Indeed in most of the cases reference is made to an award, and it was presumably realised by the company that the awards in those respective cases had in fact fixed the age of retirement at 60. This document has not been considered at all by the Tribunal in dealing with the question about the age of retirement, and that gives strength to the argument of Mr. Dudhia that this Court ought to reconsider the merits of the dispute for itself.

It appears that the company filed a list (Ex. C-1) in support of its case that the age of retirement had been fixed at 55 in 14 industrial concerns; and in reply to this list the workmen filed their own explanation (Ex. U-1). This explanation shows that in some of the cases an industrial dispute was actually pending adjudication or demands had been made by the employees to raise the age of retirement. In

(1) [1960] 2 S.C.R. 51.

regard to 4 Oil Companies specified by the company in its list (Ex. C-1) it appears that all of them have a pension scheme, and that undoubtedly makes a substantial difference. It is generally recognised in industrial adjudication that where an employer adopts a fair and reasonable pension scheme that would play an important part in fixing the age of retirement at a comparatively earlier stage. If a retired employee can legitimately look forward to the prospect of earning a pension then the hardship resulting from early compulsory retirement is considerably mitigated; that is why cases where there is a fair and reasonable scheme of pension in vogue would not be comparable or even relevant in dealing with the age of retirement in a concern where there is no such pension scheme. In regard to Godrej and Boyce there was a dispute between the parties as to the real age of retirement fixed by the employer; similarly there was a dispute about the age of retirement in Brooke Bond (India) Private Limited. The learned Tribunal considered the evidence supplied by the two documents Ex. C-1 and Ex. U-1 and held that having regard to all the relevant circumstances it would not be unreasonable to fix the retiring age at 58 in the present case. It is true that in dealing with this question the Tribunal has commenced its discussion with the observation that in a number of concerns the retirement age is 60, and that there had been for some time a trend to increase the retirement age from 55 to upwards; but the tone and trend of the discussion leave no room for doubt that the Tribunal failed to take into account the evidence supplied by the workmen in their document Ex. B filed along with their claim. This evidence strongly suggests almost a uniform tendency in Bombay to fix the age of retirement at 60 and not 55. If the Tribunal had considered this evidence and given reasons why it did not justify the workmen's claim for fixing the age of retirement at 60 it would have been another matter. Since the award does not refer to this document and gives no reasons why the trend disclosed by the document should not be adopted in the present case it has become necessary for this Court to consider that question for itself.

The learned Attorney-General contends that the

1960

Imperial Chemical Industries (India) Private Limited v. *The Workmen*

Gajendragadkar J.

industrial concerns to which the said document Ex. B refers are not comparable to the company, and so no importance should be attached to the trend disclosed by the said document. We are not impressed by this argument. One has merely to look at the industrial concerns specified in the list filed by the company to realise that if the said concerns are comparable in the present proceedings there is no reason why the concerns specified in Ex. B should be rejected as not comparable. Besides, in the case of the *Dunlop Company* (1), as in the present case, the dispute was and is between clerical and the subordinate staff and their employer, so that some of the conditions which may be relevant in fixing the age of retirement of factory workers may not necessarily apply. As this Court pointed out in the case of the *Dunlop Company* (1) the recent trend in the Bombay area clearly appears to be to fix the age of retirement at 60. That being so we see no reason why the age of retirement of the workmen in the present appeal should not be similarly fixed. As we have already observed, if the Tribunal had considered the uniform trend disclosed by Ex. B and had stated its reasons for not giving effect to that trend it would have been another matter; we would then have considered whether we should interfere with the discretion exercised by the Tribunal or not. The Tribunal however does not appear to have considered this evidence. On the whole we are satisfied that Mr. Dudhia is right in contending that the material facts in this case are very similiar to the facts in the case of the *Dunlop Company* (1). That being so, we think that the age of retirement in the case of the workmen concerned in the present appeal should be raised to 60 from 55.

The result is Civil Appeal No. 471 of 1960 filed by the company fails and is dismissed, whereas Civil Appeal No. 472 of 1960 filed by the workmen is allowed, and the directions of the award under appeal are modified. The workmen will be entitled to their costs from the company.

Appeal No. 471 dismissed. Appeal No. 472 allowed.

(1) [1960] 2 S.C.R. 51.