

AMRITSAR RAYON & SILK MILLS

v.

THEIR WORKMEN

(P. B. GAJENDRAGADKAR, K. C. DAS GUPTA and
J. R. MUDHOLKAR, JJ.)

Industrial Dispute—Gratuity scheme, Framing of—Validity—Employer's financial position—Amount of gratuity—Ceiling, if and when should be placed—Tribunal's determination to depend on relevant facts.

The present appeal arises out of an industrial dispute between the appellant and the respondents. The Industrial Tribunal gave an award and the appellant filed an appeal to this Court by way of special leave.

The main contention of the appellant was that no case had been before the tribunal for the framing of a gratuity scheme. It was further urged that even if a gratuity scheme had to be framed the tribunal was in error in not placing any ceiling on the amount of gratuity payable to the employees. The third point raised was that one month's basic wages which had been provided by the scheme was excessive and it should be reduced to 15 days' basic wages.

Held, that having regard to the financial position of the appellant the framing of the gratuity scheme was justified. As a general rule, where is no provision for superannuation and gratuity is paid at a fairly reasonable rate a ceiling should be placed on the amount of gratuity payable under the scheme. Even though gratuity schemes framed in the same industry in the same region should not disclose radical or violent differences the rate of gratuity which should be awarded in a particular case will depend on the facts of that case.

CIVIL APPELLATE JURISDICTION : Civil Appeal
No. 394 of 1961.

Appeal by special leave from the Award dated November 6, 1960, of the Industrial Tribunal, Punjab, in Reference No. 43 of 1958.

M. C. Setalvad, Attorney-General for India,

S. K. Kapur, Bishambher Lal, B. N. Kripal and K. K. Jain, for the appellant.

Janardan Sharma, for the respondents.

1962. August, 2. The Judgment of the Court was delivered by

GAJENDRAGADKAR, J.— This appeal arises out of an industrial dispute between the appellant Amritsar Rayon & Silk Mills and its workmen. The dispute originally related to seven demands made by the respondents against the appellant and these seven demands were referred by the Punjab Government for industrial adjudication to the Industrial Tribunal, Jullundur under section 10(1)(d) of the Industrial Disputes Act, 1947. The Tribunal has made its award in respect of these demands. In the present appeal, which has been brought to this Court by special leave, we are concerned with the award in so far as it deals with the respondents' claim for a gratuity scheme. The appellant urged that no case had been made out for the framing of a gratuity scheme. This plea has been rejected by the Tribunal and a gratuity scheme has been framed. It is the propriety and the validity of this scheme which are challenged before us by Mr. Kapoor on behalf of the appellant in this case.

The scheme framed by the Tribunal reads thus:—

- (1) In case of death of an employee while he is in the service of the concern on his becoming incapable of serving further due to physical or mental disability. One month's basic wages for each year of his service.

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In case of death, the gratuity will be payable to the heirs or assigns of the deceased workmen.

- (2) On termination of an employee's service by the concern after he has put in five year's service — Half month's basic wages for each year of his service.
- (3) No gratuity would be payable to an employee who resigns his job but if he has served for fifteen years continuously and is rendered unfit to serve further by old age or protareted ill health, he shall be given gratuity calculated at the rate of one month's basic wages for each completed year of his service.
- (4) No gratuity would be payable to an employee who is dismissed for misconduct.

In rejecting the appellant's contention that no scheme should be framed, the Tribunal has found that the appellant which was started in 1934 is the biggest Textile Mills in Amritsar and its career so far has been one of success all along the line. The invested capital of the concern is Rs.14 lakhs and its working capital is Rs.2,70,000/—. On its roll are employed 1,250 employees whose monthly wage bill comes to Rs.1,20,000/-. It is admitted that the appellant has been paying bonus to its workmen since 1946 and has allowed dividend on invested capital. It contributes to the Provident Fund and the Employees State Insurance Scheme. Having regard to this financial position of the appellant, the Tribunal has held, and we think rightly, that the appellant cannot successfully resist the demand for the framing of a gratuity scheme.

Mr. Kapoor, however, contends that even if a gratuity scheme has to be framed, the Tribunal

was in error in not placing any ceiling on the amount of gratuity payable to the employees. In our opinion, this contention is well-founded. Speaking generally, where there is no provision for superannuation and gratuity is paid at a fairly reasonable rate, gratuity schemes framed by Industrial Tribunals generally provide for a ceiling, and so, we do not see how the Tribunal was justified in departing from this generally accepted position... The rate fixed in the present case is not unduly low and admittedly, there is no provision for superannuation. Therefore we think that the appellant is justified in contending that a ceiling should be put on the amount of gratuity payable under the scheme. On the whole, we think it would be reasonable if the maximum amount of gratuity payable under the scheme is fixed at 15 months' basic wages. We ought to make it clear that in coming to this conclusion we do not propose to lay down any hard and fast rule that a ceiling must be placed in every case and that it should be of the order of 15 months' basic wages; as we have repeatedly observed, in framing gratuity scheme, all relevant factors have to be taken into account and so, inevitably the schemes are likely to differ from case to case.

Mr. Kapoor then contends that one month's basic wages which has been provided for by clauses (1) and (3) is excessive and it should be reduced to 15 days' basic wages. This argument is that the usual pattern of gratuity schemes in the Punjab shows that it is 15 days' basic wages which is provided under similar clauses. In support of his argument, Mr. Kapoor has referred us to some of the awards produced by him. In the gratuity scheme framed in the New India Embroidery Mills, Chhenarta, 15 days' wages has been adopted as the basis, but this award includes dearness allowance and so, this provision is not very helpful because in the present case, the rate has been fixed by

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reference to the basic wages alone. The scheme framed in the Niemla Textile Finishing Mills, Chheharta, is on the same lines as the scheme under the New India Embroidery Mills and the same comment, therefore, falls to be made about it. The gratuity scheme in the Technological Institute of Textiles, Bhiwani, has adopted the basis of 1/2 month's basic wages for each completed year of service, but there is no ceiling placed by the scheme. On the other hand, the gratuity scheme in the Shambhu Nath & Sons Ltd., Amritsar, adopts one month's basic wages for each completed year of service and so does the scheme in the India Woollen Textile Mills, Chheharta, and the India Calico Printing Mills. The Jagatjit Cotton Textile Mills Ltd., Phagwara, has 1/2 month's basic wages; the Punjab Distilling Industries Ltd. provides for one month's basic wages; so does the New Egerton Woollen Mill, Dhariwal. The Jawala Flour Mills Amritsar, provides for the rate of 1/2 month's basic wages in case of workmen with five years of service and in case of workmen with service above five years at the rate of one month's basic wages. It would thus be seen that the claim made by the appellant that the pattern of gratuity schemes in the Punjab invariably shows the adoption of the rate of 15 days' basic wages for each completed year of service, is not supported by the several awards produced by the parties before us, and so, it cannot be said that the present award has departed from any fixed uniform pattern in the matter.

Mr. Kapoor then referred to the decision of this Court in *Bharatkhand Textile Mfg. Co. Ltd. v. The Textile Labour Association Ahmedabad*(¹) where the gratuity scheme provided, inter alia, for one month's basic wages for each completed year of service for the period before the coming into force of the Employees Provident Funds Act, 1952, and half

(1) [1960] 3 S. C. R. 329.

a month's basic wages for each completed year of service thereafter, subject to a maximum of 15 month's basic wages. This shows that the award with which this Court was dealing in that case had made a distinction between gratuity schemes prior to 1952 and those subsequent to it, and this distinction was based on the fact that the Employees' Provident Funds Act had come into force in 1952. Therefore, we do not think it would be fair to suggest that because the scheme thus framed was accepted by this Court in appeal it follows that this Court has laid down that in every case half a month's basic wages should be paid after 1952.

Mr. Kapoor has also relied on the decision of the Industrial Tribunal at Rajkot in *Arvind Mills Co-operative Supply Society Ltd., Ahmedabad v. Their Workmen*.⁽¹⁾ The scheme framed by the Tribunal in this case no doubt provides for 15 day's basic wages as centended by Mr. Kapoor and prescribes the ceiling of 10 months's basic wages. Similarly, in the *Rashtriya Mill Majdoor Sangh, Bombay v. Millowners' Association, Bombay* ⁽²⁾ the gratuity schemes framed appears to be substantially similar to the one framed in the *Bharatkhand Textile Mfg. Co. Ltd.*⁽³⁾ These decisions merely show that 15 days basic wages has been adopted as a rate by some of the gratuity schemes framed by Industrial Tribunals. We would, however, not be prepared to accept Mr. Kapoor's contention that these decisions support the general argument that invariably the rate of 15 days' basic wages must be adopted. That is a question which has to be decided by the Tribunal on the facts of each case; and though it may be desirable that gratuity schemes framed in the same industry in the same region should not disclose radical or violent differences, it would not be possible to introduce uniformity by accepting the argument that 15 days

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(1) (1959) 2 L.L.J. 107, 119 (2) [1956-57] II F.J. R. 372.

(3) [1960] 3 S.C.R. 329.

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should be treated as the invariable rate in the gratuity schemes. On the material adduced before us, we are not prepared to hold that the basis adopted by the award under appeal has made either a violent or radical departure from the pattern prevailing in the same industry in the Punjab or is otherwise unjustified on the merits. The fact that we decline to interfere with the rate prescribed by the award under appeal does not also mean that according to us, that rate should be adopted in other cases without reference to the relevant facts in each of them.

The result is, the award is modified by prescribing a ceiling of 15 month's basic wages. The rest of the award is confirmed. There would be no order as to costs.

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August 3.

ABINASH CHANDRA BOSE

v.

BIMAL CHANDRA BOSE

(B. P. SINHA, C. J., K. N. WANCHOO and
J. C. SHAH, JJ.)

*Criminal Breach of Trust—Prosecution of lawyer by client—
Hand-writing expert neither called nor examined—Acquittal by
trial Magistrate—Retrial and examination of expert directed by
High Court on appeal—Propriety.*

The appellant, a practising lawyer engaged by the respondent to investigate title in respect of a property which the latter wanted to purchase, was prosecuted by him on a charge under s. 409 of the Indian Penal Code for misappropriating a sum of Rs. 5000/- entrusted to him for that purpose. The prosecution mainly depended on a letter written by the appellant which would show that a sum of Rs. 4200/- out of the said amount of Rs. 5000/- had been asked for by the appellant. This letter was challenged as a forgery by the