MANAGEMENT OF INDIAN OIL CORPORATION LTD.

v.

ITS WORKMEN

July 24, 1975

[A. N. RAY, C.J., K. K. MATHEW, V. R. KRISHNA IYER AND S. M. FAZAL ALI, JJ.]

Industrial Disputes Act, 1947, *Section 9-A—Appellant paying compensatory allowance to workmen voluntarily but withdrawing it later unilaterally without notice to workmen—Appellant, if entitled to withdraw the concession.*

By virtue of a notification dated September 3, 1957, the Central Government granted compensatory allowance according to certain rates to all Central Government employees posted throughout Assam. The appellant thought it fit in the circumstances to grant compensatory allowance to all its employees in September 1959. It was not made through any standing order or circular. Thereafter there was another notification by the Central Government dated December 8, 1960 by which it was provided that the employees in receipt of the compensatory allowance would be given the option to choose the house rent allowance or compensatory allowance but will not be entitled to draw both. This was to remain in force for five years. In view, however, of the notification dated December 8, 1960, the management thought that the contents of the circular were binding on the company and therefore they unilaterally, without giving any notice to the workers, withdrew the concession of the compensatory allowance which had been granted to the workers in September 1959. This concession was withdrawn with effect from July 1960. The workers moved the Government for making a refernce to the Tribunal because a dispute arose between the parties regarding the competency of the appellant to withdraw the concession granted by it unilaterally. The Government made a reference to the Industrial Tribunal which has held that there was a dispute between the parties and as s.9A of the Industrial Disputes Act, 1947, has not been complied with by the Company the management was not legally entitled to withdraw the concession of the Assam Compensatory Allowance granted to the employees. This appeal has been preferred by the management on the basis of the special leave granted by this Court.

It was contended for the appellant (i) that the compensatory allowance was given purely on the basis of the Central Government circular dated September 3, 1957, on the distinct understanding that it was a temporary measure which could be withdrawn at the will of the employer and did not amount to a condition of service at all; (ii) that even if the provisions of s.9A of the Act applied, since the management had substituted the house rent allowance for compensatory allowance the workers were not adversely affected and, therefore, it was not necessary to give any notice to them before withdrawing the concession of the compensatory allowance.

Rejecting the contentions and dismissing the appeal,

HELD : (i) There is no evidence to show that the management before granting the concession of the compensatory allowance had in any way indicated to the workers that this was only a stop-gap arrangement which could be withdrawn after the housing subsidy was granted. Even before the unilateral withdrawal of the concession granted by the appellant no notice was given to the workers nor were they taken into confidence, nor any attempt was made to open a dialogue with them on this question. So far as the compensatory allowance is concerned it was given in order to enable the workers to meet the high cost of living in a far-off and backward area like Assam. It had absolutely no casual connection with the housing subsidy or house rent allowance which was a different type of concession. Furthermore, the grant of compensatory allowance by the appellant was indeed a very charitable act which showed that the employers were extremely sympathetic towards the need of their

A workers. In these circumstances, the conclusion is irresitible that the grant of compensatory allowance was an implied condition of service so as to attract the mandatory provisions of s. 9A of the Act. Twenty-one days notice has to be given to the workmen. This was not done in this case. [113C—114B]

Workmen of Hindustan Shipyard (Private) Ltd. v. *Industrial Tribunal Hyderabad and others*, [1961] 2 L.L.J. 526, *Bhiwani Textile Mills* v. *Their Workmen and others* [1969] 2 L.L.J. 739, *Oil and Natural Gas Commission* v. B *The Workmen*, [1973] 2 S.C.R. 482, *Hindustan Lever Ltd.* v. *Ram Mohan Ray and Others*, [1973] 4 S.C.C. 141, and *M/s. Tata Iron and Steel Co. Ltd.* v. *The Wrokmen and others*, [1972] 2 S.C.C. 383, referred to.

(ii) The compensatory allowance and housing subsidy are two different and separate categories of the terms of service conditions and they cannot be clubbed together, nor can one be made dependent on the other. The object of these two concessions is quite different and both of them serve quite different purposes. [118A-B]

C CIVIL APPELLATE JURISDICTION : Civil Appeal No. 377 of 1970.

From the Award dated the 22nd October, 1969 of the Industrial Tribunal, Gauhati in Reference No. 16 of 1965.

Anand Prakash and *D. N. Mishra*, for the appellant.

D *D. L. Sen Gupta* and *S. K. Nandy*, for respondents.

The Judgment of the Court was delivered by

FAZAL ALI, J.—This is an appeal by special leave against the award dated October 22, 1969 by Mr. R. Medhi, Presiding Officer, Industrial Tribunal, Gauhati on a reference made to the Tribunal by the Government of Assam by virtue of its notification No. FLR. 46/61/ E 194 dated July 14, 1965 in view of an industrial dispute having existed between the parties. The appellant is the management of the Indian Oil Corporation Ltd. which has undertaken what is known as the Assam Oil Refineries situated at Gauhati. The reference to the Tribunal was made by the Government in the following circumstances :

By virtue of a notification dated September 3, 1957, the Central F Government granted compensatory allowance according to certain rates to all Central Government employees posted throughout Assam. The appellant set up the refinery some time in the year 1959 and in view of the circular of the Central Government referred to above the management thought it fit in the circumstances to grant compensatory allowance to all its employees some time in September 1959. The G grant of compensatory allowance was not made through any standing order or circular but it is alleged to have been given as an implied condition of service. Thereafter there was another notification by the Central Government dated December 8, 1960 by which it was provided that the employees in receipt of the compensatory allowance would be given the option to choose the house rent allowance or compensatory allowance but will not be entitled to draw both. This order was to remain in force for five years. By virtue of another notifi- H cation dated August 9, 1965 the Central Government made it further clear that the employees of the Central Government would have to draw either compensatory allowance at the existing rates or the house

rent allowance but not both. In view, however, of the notification dated December 8, 1960, alluded to above, the management thought that the contents of the circular were binding on the Company and, therefore, they unilaterally, without giving any notice to the workers, withdrew the concession of the compensatory allowance which had been granted to the workers in September 1959. This concession was withdrawn with effect from July 1960. The workers moved the Government for making a reference to the Tribunal because a dispute arose between the parties regarding the competency of the appellant to withdraw the concession granted by it unilaterally. The Government made a reference to the Industrial Tribunal which has held that there was a dispute between the parties and as s. 9A of the Industrial Disputes Act, 1947—hereinafter referred to as 'the Act'—has not been complied with by the Company the management was not legally entitled to withdraw the concession of the Assam Compensatory Allowance granted to the employees. The award of the Industrial Tribunal was published by the Government of Assam in the Gazette dated July 14, 1965.

Dr. Anand Prakash, counsel for the appellant, made the following three contentions before us :

(1) that the compensatory allowance was given purely on the basis of the Central Government circular dated September 3, 1957, on the distinct understanding that it was a temporary measure which could be withdrawn at the will of the employer and did not amount to a condition of service at all;

(2) that even if the provisions of s. 9A of the Act applied, since the management had substituted the house rent allowance for compensatory allowance the workers were not adversely affected and, therefore, it was not necessary to give any notice to them before withdrawing the concession of the compensatory allowance; and

(3) that even if the provisions of s. 9A of the Act were not complied with, the Tribunal should have at least gone into the question on merits instead of basing its award on the question of applicability of s. 9A of the Act.

Before, however, dealing with the contentions raised before us, it may be necessary to mention a few admitted facts. In the first place it is the admitted case of the parties that the circulars of the Central Government were not binding on the appellant Corporation, but the Corporation chose to follow them in its own wisdom. Secondly it is also admitted that at the time when the concession of compensatory allowance was granted to the employees of the Corporation, there was nothing to show that it was given only by way of an interim measure which

A could be withdrawn at the will of the employer. Thirdly it is also not disputed that before withdrawing the concession of compensatory allowance in August 1960 the appellant gave no notice to the workers, not did it consult them in any way before depriving them of the concession originally granted by the employer. In fact the Tribunal has found very clearly that the act of the Corporation in granting the Assam Compensatory Allowance was an independent one and made out of their B own volition, though the circulars of the Central Government may have been one of the factors that swayed the decision of the management. It is against the background of these admitted facts and circumstances that we have to examine the contentions raised by counsel for the appellant in this appeal.

As regards the first contention that the concession of the compen- C satory allowance was granted to the workers by way of a temporary measure and would not amount to a condition of service, we find absolutely no material on the record to support the same. There is no evidence to show that the management before granting the concession of the compensatory allowance had in any way indicated to the workers that this was only a stop-gap arrangement which could be withdrawn after the housing subsidy was granted. Even before the unilateral with- D drawal of the concession granted by the appellant no notice was given to the workers nor were they taken into confidence, nor any attempt was made to open a dialogue with them on this question. Indeed if the circulars of the Central Government are admittedly not binding on the Corporation, then we are unable to appreciate the stand taken by the appellant that the management unilaterally withdrew the concession merely because of the Central Government circulars. So far as the E compensatory allowance is concerned it was given in order to enable the workers to meet the high cost of living in a far-off and backward area like Assam. It had absolutely no causal connection with the housing subsidy or house rent allowance which was a different type of concession. Furthermore, the grant of compensatory allowance by the appellant was indeed a very charitable act which showed that the employers were extremely sympathetic towards the needs of their F workers. In these circumstances we have no hesitation in holding that the grant of compensatory allowance was undoubtedly an implied condition of service so as to attract the mandatory provisions of s.9A of the Act which runs thus :

> "No employer, who proposes to effect any change in the conditions of service applicable to any workman in respect G of any matter specified in the Fourth Schedule, shall effect such change,—
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> (a) without giving to the workmen likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected; or
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> (b) within twenty-one days of giving such notice :
>
> H Provided ....."

An analysis of s. 9A of the Act clearly shows that this provision comes into operation the moment the employer proposes to change any condi-

tion of service applicable to any workman, and once this is done twenty-one days notice has to be given to the workmen. This admittedly was not done in this case. By withdrawing the Assam Compensatory Allowance the employers undoubtedly effected substantial change in the conditions of service, because the workmen were deprived of the compensatory allowance for all time to come.

Dr. Anand Prakash however relied on a few decisions in support of the fact that such a change in the conditions of service does not amount to any change as contemplated by s. 9A of the Act. Reliance was placed on a decision of the Andhra Pradesh High Court in *Workmen of Hindustan Shipyard (Private) Ltd.* v. *Industrial Tribunal, Hyderabad and others*(1). In our opinion the facts of that case are clearly distinguishable from the facts in the present case. In that case a concession was granted to the employees to attend the office half an hour late due to war time emergency, but this concession was conditional on the reservation of the right to change the office hours and it was open to the employer to take a different decision. Secondly the working hours being fixed at 6½ hours were below the maximum prescribed by the Factories Act which were 8 hours and, therefore, there was no adverse change in the conditions of service. Finally in this case there was a clear finding given by the learned Judge that the concession would not amount to a condition of service. In this connection, Jaganmohan Reddy, J., observed as follows :

> "In this case as it cannot be said that the concession which they were enjoying in the winter month was a privilege to which they were entitled before the Act came into force in February 1948. I have already stated that the concession was subject to the condition of its withdrawal unilaterally and cannot, therefore, be said to have conferred any right on the employees to enjoy it as such.
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> ..... further that s. 9A came into play only when the conditions of service were altered, but the workmen having agreed to the reservation of the employer to alter it, they have made the right to alter it also a condition of service and therefore the action in accordance with the said right can give no cause for complaint."

In the instant case we have already held that the grant of compensatory allowance cannot be construed to be merely an interim measure, but having regard to the circumstances in which this concession was given will amount to an implied condition of service.

Reliance was also placed on a decision by this Court in *Bhiwani Textile Mills* v. *Their Workmen and others*(2), where this Court observed as follows :

> "Sri G. B. Pai, on behalf of the mills, and Sri M. S. K. Sastri and Y. Kumar for the two unions representing the workmen, stated before us that the parties are agreed that this

(1) [1961] 2 L. L. J. 526. (2) [1969] 2 L. L. J. 739.

A direction given in the award may be deleted as no party objects to its deletion. Consequently, we need not go into the question whether the tribunal was in law competent to make such a direction in the award or not. .....

In view of this agreement between the parties, the only question that remains for decision by us is whether the tribu-
B nal was right in directing that workmen, who do duty on any Sunday, will be entitled to an extra payment of 20 per cent of their consolidated wages for that Sunday."

A perusal of the observations made by this Court would clearly show that the case before this Court proceeded on the basis of a consent order as agreed to by counsel for the parties. Secondly the question
C for decision was whether the workmen were entitled to additional payment for working on Sundays even if they were given another off day as a substitute for Sunday. The Court pointed out that this could not be treated as a condition of service because all that the workmen were entitled to was that they should take at least one day off in a week and this facility was not disturbed but instead of giving Sunday off they
D were given some other day as weekly off. In these circumstances this case also does not assist the appellant.

Dr. Anand Prakash also cited a decision in *Oil & Natural Gas Commission* v. *The Workmen*(1). In this case also there was a finding of fact by this Court that there was nothing to show that 6½ hours per day was a condition of service. In this connection, the Court observed
E as follows :

"In our opinion, on the facts and circumstances of this it cannot be said that 6½ working hours a day was a term of service, for the simple reason that it was only during a period of the first six months, when the factory was being constructed at the site of the workshop that, due to shortage of accommodation, the administrative office was, as an interim arrange-
F ment, temporarily located in tents at a place about 2 k.m. away, that the staff in this office was not required to work for more than 6½ hours per day. There is no evidence that 6½ hours per day was a condition of service; neither is there any such term of service in their letters of appointment, nor is such a term of service otherwise discernible from other material on the record."

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In view of our finding, however, that the grant of the Assam Compensatory Allowance was undoubtedly a condition of service this case has absolutely no application.

Reliance was placed on a decision of this Court in *Hindustan Lever Ltd.* v. *Ram Mohan Ray and Others*(2) for the proposition that
H withdrawal of the concession of the compensatory allowance did not adversely affect the service conditions of the workmen. In this case, this Court observed as follows :

(1) [1973] 2 S. C. R. 482. (2) (1973) 4 S. C. C. 141.

"As regards item 11 it was urged that as one department out of three has been abolished, this item applies. Though to bring the matter under this item the workmen are not required to show that there is increase in the work-load, it must be remembered that the 4th Schedule relates to conditions of service for change of which notice is to be given and section 9-A requires the employer to give notice under that section to the workmen likely to be affected by such change. The word 'affected' in the circumstances could only refer to the workers being adversely affected and unless it could be shown that the abolition of one department has adversely affected the workers it cannot be brought under item 11. The same consideration applies to the question of change in usage under item 8."

It is true that this Court held on the facts of that case that the Company had abolished one department, but as the work-load was not increased the workers were not adversely affected and the abolition of one department could not be brought under item 11. The contingency contemplated in the aforesaid case, however, cannot be equated with the present case by virtue of the unilateral deprivation of the compensatory allowance which was received by the employees by the withdrawal of which they were undoubtedly prejudiced. It cannot be contended that the sudden withdrawal of a substantial concession in the conditions of service would not materially or adversely affect the workmen. We are, therefore, of opinion that the aforesaid case also does not support the contention of the learned counsel for the appellant.

On the other hand Mr. Sen Gupta appearing for the respondents drew our attention to the decision of this Court in *M/s. Tata Iron and Steel Co. Ltd.* v. *The Workmen and others*(1) where this Court, while pointing out the object of s. 9A, observed as follows :

"The real object and purpose of enacting Section 9-A seems to be to afford an opportunity to the workmen to consider the effect of the proposed change and, if necessary, to represent their point of view on the proposal. Such consultation further serves to stimulate a feeling of common joint interest of the management and workmen in the industrial progress and increased productivity. This approach on the part of the industrial employer would reflect his harmonious and sympathetic co-operation in improving the status and dignity of the industrial employee in accordance with the egalitarian and progressive trend of our industrial jurisprudence, which strives to treat the capital and labour as co-sharers and to break away from the tradition of labour's subservience to capital."

The observations made by this Court lav down the real test as to the circumstances in which s. 9A would apply. In the instant case, however, we are satisfied—(1) that the grant of the compensatory allow-

(1) [1972] 2 S. C. C. 383.

A ance was an implied condition of service; and (2) that by withdrawing this allowance the employer sought to effect a change which adversely and materially affected the service conditions of the workmen. In these circumstances, therefore, s. 9A of the Act was clearly applicable and the non-compliance with the provisions of this section would undoubtedly raise a serious dispute between the parties so as to give B jurisdiction to the Tribunal to give the award. If the appellant wanted to withdraw the Assam Compensatory Allowance it should have given notice to the workmen, negotiated the matter with them and arrived at some settlement instead of withdrawing the compensatory allowance overnight.

It was also contended that the compensatory allowance was only an allowance given in substitution for housing subsidy. We are, however, C unable to agree with this contention. Mr. Sen Gupta appearing for the respondents rightly pointed out that there is a well-knit and a clear distinction between the compensatory allowance and a housing subsidy or house-rent allowance. This distinction is clearly brought out by the Second Pay Commission's Report (1957-59) in which the Commission observed as follows :

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> "The compensatory allowances considered here fall into there broad groups : (i) allowances to meet the high cost of living in certain specially costly cities and other local areas, including hill stations where special requirements such as additional warm clothing and fuel etc., add to the cost of living; (ii) those to compensate for the hardship of service in certain areas, e.g. areas which have a bad climate, or are E remote and difficult of access; and (iii) allowances granted in areas, e.g. field service areas, where because of special conditions of living or service, an employee cannot, besides other disadvantages, have his family with him. There are cases in which more than one of these conditions for grant of a compensatory allowance are fulfilled."

F The Second Pay Commission also observed :

> "The rent concessions dealt with here are of two kinds : (i) provision of rent free quarters, or grant of a house rent allowance in lieu thereof; and (ii) grant of a house rent allowance in certain classes of cities to compensate the employees concerned for the specially high rents that have to be paid in those cities. The former is allowed only to such staff as are G required to reside on the premises where they have to work, and is thus intended to be a facility necessary to enable an employee to discharge his duties. In some cases, it is a supplement to pay or substitute for special pay etc., which would have been granted but for the existing of that concession. In either case, it is not related to the expensiveness of a locality. The latter, on the other hand, is a compensatory H or a sort of a dearness allowance, intended to cover not the high cost of living as a whole but the prevailing high cost of residential accommodation; and it has no relationship to the nature of an employee's duties."

The observations made by the Second Pay Commission throw light on this question. In fact the compensatory allowance and housing subsidy are two different and separate categories of the terms of service conditions and they cannot be clubbed together, nor can the one be made dependent on the other. The object of these two concessions is quite different and both of them serve quite different purposes.

It was next contended that even if s. 9A of the Act applied, the Tribunal should have gone into the question on merits instead of giving the award on the basis of non-compliance with the provisions of s. 9A. This argument also appears to us to be equally untenable. On the facts and circumstances of the present case the only point that fell for determination was whether there was any change in the conditions of service of the workmen and, if so, whether the provisions of s. 9A of the Act were duly complied with. We cannot conceive of any other point that could have fallen for determination on merits, after the Tribunal held that s. 9A of the Act applied and had not been complied with by the appellant.

It was also faintly suggested that there was no question of a customary claim or usage because the period during which the compensatory allowance was granted and withdrawn was too short. It is, however, not necessary to take any notice of this argument, because counsel for the respondents Mr. Sen Gupta fairly conceded that he had not based his claim on any customary claim at all. It was argued by Mr. Sen Gupta that after the Central Government notification of September 3, 1957, the appellant took an independent and voluntary decision on their own to give the facility of the Assam Compensatory Allowance as an implied term of the contract and having done so they could not wriggle out from the provisions of s. 9A of the Act.

Thus all the contentions raised by the appellant fail and the appeal is dismissed, but in the circumstances of this case we leave the parties to bear their own costs.

V.M.K. *Appeal dismissed.*