

PETITIONER:
SAVANTH (K.)

Vs.

RESPONDENT:
MYSORE ROAD TRANSPORT CORPORATION & ANR

DATE OF JUDGMENT 28/02/1978

BENCH:
SINGH, JASWANT
BENCH:
SINGH, JASWANT
KRISHNAIYER, V.R.

CITATION:
1978 AIR 1133 1978 SCR (3) 398
1978 SCC (2) 378

ACT:
Fixation of Pay-Initial fixation of pay in the revised scale-Scope and ambit of clause 4 of the Industrial Truce Agreement arrived at on January 10, 1958 between the management of the Mysore Government Road Transport Department and the representatives of the State Transport Employees' Federation.

HEADNOTE:
Consequent upon the Reorganisation of States and the formation of the enlarged Mysore State as well as the expansion of the Mysore Government Road Transport Department, it was considered necessary by the members of the State Transport Employees Federation and the Management of the Transport Department to have uniform pay scales, service conditions etc. for the entire Organisation of the Transport Department. Accordingly on January 10, 1958 an Industrial Truce Agreement was concluded between the management of the Transport Department and the representatives of the State Transport Employees' Federation which as given retroactive effect from, April 1, 1957, Clause 4(a) of the agreement required the pay of an employee to be fixed in the new scale at a stage next above his pay in the existing scale as on 1-4-1957 (including the increment, if any, accruing on that date). After fixation his initial pay, in the revised scale, an employee became entitled under clause 4(b) of the agreement to be granted advance increment at the rate of one increment for 3 completed years of service, two increments for 4 completed years of service and three increments for 6 or more completed years of service. The fixation of pay was however made subject to clause 4(c) which reads : "In cases where the minimum pay in the new scale has to be granted under sub clause (a) of clause 4, the benefit of advance increments according to subclause (b) above shall not accrue when the increase of the minimum pay in the new scale over the pay in the existing scale exceeds Rs. 25/- plus one increment in the new scale. In other cases, where the initial pay has to be fixed above the minimum, the total benefit under sub-clause (a) and (b) above shall be uniformly limited to Rs. 25/- plus one increment in the revised scale subject to a minimum of Rs. 51-."

The initial pay in the revised scale of 175-15-325 of the appellant who joined the service on September 1, 1950 and who on the relevant date was drawing a pay of Rs. 150/- in the time scale of 150-10-200 was fixed @ Rs. 190/-. Dissatisfied with the fixation, the appellant made a representation to the management urging that his initial pay in the revised scale ought to have been fixed at Rs. 220/-. On August 1, 1961, the Mysore State Road Transport Corporation was constituted and in view of the fact that the service conditions of the employees of the erstwhile Transport Department were pro tested by Act 34 of 1951, the appellant opted for service under the Corporation and kept on pursuing the earlier representation for correct fixation of pay. His efforts having failed, he made an application on December 20 1965 before the Labour Court under section 33(c) (2) of the Industrial Disputes Act, 1947 for proper adjudication. Holding that the appellant's pay had to be fixed at Rs. 220/- p.m. in the pay scale of Rs. 175-15-325 with a dearness allowance @ Rs. 501- p.m. as on April 1, 1957, the Labour Court by its order dated September 30, 1966 allowed the claim of the appellant and directed the Corporation to pay him a sum of Rs. 3,345.29 Ds. on account of the benefits claimed by him. When this view was challenged before the High Court by an application under Art. 226, the High Court allowed the petition and held that the fixation of pay at Rs. 190/- made by the erstwhile management was correct.

Allowing the appeal by special leave, the Court
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HELD : 1. A plain reading of clause 4 of the Industrial Truce Agreement makes it crystal clear that the pay of the appellant as on April 1, 1957 in the then existing scale of Rs. 150-10-200 being admittedly Rs. 150/- i.e. less than the minimum pay of the revised scale of Rs. 175-15-325, it had, according to clause 4(a) of the Agreement to be fixed at Rs. 175/- which is the minimum of the revised scale. The appellant having put in more than six years' service and his case being clearly outside the pale of the prohibition envisaged by the first part of sub-clause (c) of clause 4 of the Agreement, he had to be granted the benefit of three advance increments in terms of the formula contained in sub-clause (b) of clause 4 of the Agreement which would take his initial pay to Rs. 220/-. [402 D-E]

2. The second part of sub-clause (c) of Clause 4 of the Agreement operate only in these cases which fell within the prohibition contemplated by the first part of sub-clause (c) of clause 4 i.e. where the increase in the minimum pay in the revised scale over the pay in the scale which existed on April 1, 1957 exceeds Rs. 25/- plus one increment in the new scale i.e. if it exceeds Rs. 25/plus Rs. 15/- totalling Rs. 40/-. As in the instant case the increase of the minimum pay in the new scale does not exceed Rs. 40/-, the second part of sub-clause (c) of clause 4 which is residuary cannot be invoked by the Corporation. [402 E-G]

3. The words "in other cases" occurring in the residuary part of sub clause (c) of clause 4, make it abundantly clear that it is only where a case does not fall within purview of the first part of sub-clause (c) of clause 4 that it would be governed by the second part of the sub-clause. [402 H, 403 A]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1502 of

1971.

(Appeal by Special Leave from the Judgment and Order dated 14-12-1970 of the Mysore High Court in Writ Petition No. 1176 of 1967).

E. Udayarathnam for the Appellant.

S. V. Gupte Attorney General and J. Ramamurthi for Respondent No. 1.

The Judgment of the Court was delivered by JASWANT SINGH, J. This appeal by special leave which is directed against the judgment and order dated December 14, 1970 of the High Court of Mysore at Bangalore allowing the writ petition No. 1176 of 1967 filed before it by the first respondent herein under Articles 226 and 227 of the Constitution and quashing the orders dated September 30, 1966 and January 1, 1967 of the Labour Court, Bangalore made in the appellant's application No. 171 of 1965 raises an interesting question as to the scope and ambit of clause 4 of the Industrial Truce Agreement arrived at on January 10, 1958 between the Management of the Mysore Government Road Transport Department and the representatives of the State Transport Employees' Federation.

It appears that the appellant entered the service of the Bangalore Transport Company Ltd. on September 1, 1950 as a Probationary Traffic Supervisor on a salary of Rs. 80/- per mensem. On completion of his probationary period, he was confirmed in the said post on a salary of Rs. 100/- in the pay scale of Rs. 100-10-150. By virtue of the powers vested in it under the Bangalore Road Transport Services Act No. 8 of 1956, the Government of Mysore acquired the

400 Bangalore Transport Company Ltd. with effect from October 1, 1956 with the result that along with other employees of the Company, the appellant became a civil servant in the Transport Department of the Government of Mysore which catered to the transport requirements of the public. In course of time, the appellant was appointed as Assistant Traffic Superintendent and was given a higher pay scale of Rs. 150-10-200. On April 1, 1957 when he held that post, he was in the pay scale of Rs. 150-10-200 and was drawing a salary of Rs. 1501- P.M. With the Re-organisation of the States and the formation of the enlarged Mysore State as well as the expansion of the Mysore Government Road Transport Department (hereinafter referred to as Transport Department) comprising of the Hubli Region of the ex-Bombay State Road Transport Corporation, the Raichur Section of the ex-Hyderabad State Road Transport Department and the Bangalore Transport Service of the ex-Bangalore Transport Company Ltd. having their respective pay scales, service conditions etc., it was considered necessary by the members of the State Transport Employees Federation as well as the Management of the Transport Department to have uniform pay scales, service conditions etc. for the entire Organisation of the Transport Department. Accordingly, on January 10, 1958, an Industrial Truce Agreement was concluded between the Management of the Transport Department and the representative of the Transport Employees' Federation which was given a retroactive effect from April 1, 1957. Clause 4 of this Agreement which was intended to bring about uniformity of pay scales in all the divisions of the Transport Department provided as follows :-

"4. Weightage in the revised pay scales will be admissible only to the regular employees of the Government Road Transport Department of Ex-State of Mysore and the Bangalore Transport Service Unit.

(a) The pay of an employee shall be fixed in the new scale at a stage next above his pay in the existing scale on 1-4-1957, and, if his present pay is less than the minimum of the revised scale, his pay shall be fixed at such minimum in the revised scale.

Note-The pay in the existing scale on 1-4-1957 includes the increment, if any, accruing on that date.

(b) After fixing the pay as above i.e. 4(a) lie shall be granted advance increments in the revised scale as under :

(1) For 3 completed years of service--1 Increment.

(2) For 4 completed years of service--2 Increments.

(3) For 6 or more completed years of service--3 Increments.

Note-Service means, the entire service of the employee irrespective of the grade held by him.

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(c) In cases where the minimum pay in the new scale has to be granted under sub-clause (a) of clause 4, the benefit of advance increments according to subclause (b) above shall not accrue when the increase of the minimum pay in the new scale over the pay in the existing scale exceeds Rs. 25/- plus one increment in the new scale. In other cases where the initial pay has to be fixed above the minimum, the total benefit under sub-clauses (a) and (b) above shall be uniformly limited to Rs. 25/- plus one increment in the revised scale subject to a minimum of Rs. 5

(d) The above principle shall apply in fixing the initial pay both in substantive and officiating appointments.

(e) When the weightage under sub-clause (b) above takes the total pay beyond the scale, the difference is treated as personal pay.

(f) The future increments will accrue from 1-4-1958."

After the conclusion of the aforesaid Industrial Truce Agreement, then management of the Transport Department fixed the initial pay of the appellant in the new scale at Rs. 190/-. Dissatisfied with this fixation, the appellant made a representation to the management urging that his initial pay in the revised scale ought to have been fixed at Rs. 220/- and that it had been wrongly fixed at Rs. 190/-.

On August 1, 1961, a Corporation styled as the Mysore State Road Transport Corporation' (hereinafter referred to as 'the Corporation') was constituted under section 3 of the Road Transport Corporation Act (Act 34 of 1951). By virtue of a notification issued by the Government of Mysore Under section 34 of the Act, the Corporation took over the business of the, Transport Department together with all its liabilities as the sole successor of the Department. In view of the fact that the said notification protected the service conditions of the employees of the erstwhile Transport Department, the appellant opted for service under the Corporation and kept on pursuing the earlier representation made by him for fixation of his initial pay as on April 1, 1957 at Rs. 220/- in terms of the first part of sub-clause (c) of clause 4 of the Industrial Truce

Agreement. The efforts made by him in this behalf having proved ineffective, the appellant made an application on December 20, 1965 before the Labour Court under section 330(2) of the Industrial Disputes Act, 1947 claiming that his initial pay as on 1, 1957 had been wrongly fixed by the management of the Transport Department at Rs. 190/- as against Rs. 220/- to which he was entitled by virtue of clause 4 of the Industrial Truce Agreement. The appellant also claimed increase in his dearness allowance in terms of the said agreement. Holding that the appellant's pay had to be fixed at Rs. 220/- P.M. in the pay scale of Rs. 175-15325 with a dearness allowance of Rs. 50/- P.M. as on April 1, 1957,

the Labour Court by its order dated September 30, 1966 allowed the claim of the appellant and directed the Corporation to pay him a sum 402

of Rs. 3,345.29 p. on account of the benefit claimed by him. The Order was challenged by the Corporation before the High Court of Mysore by means of a writ petition under Articles 226 and 227 of the Constitution. By its aforesaid judgment and order dated December 14, 1970, the High Court allowed the petition and held that the erstwhile management of the Transport Department was right in fixing the initial pay of the appellant at- Rs. 190/-. It is against this judgment and order that the appellant has come up in appeal to this Court by special leave, as already stated.

In the absence of the appellant who has chosen not to appear despite service, the learned Attorney General has taken us through the material on the record and has urged that the High Court was right in reversing the order of the Labour Court and upholding the contention of the Corporation that the initial pay of the appellant could be fixed only at Rs. 190/- and not at Rs. 220/- as claimed by the appellant.

We have given our careful consideration to the submissions made by the learned Attorney General but are unable to agree with him.

A plain reading of clause 4 of the Industrial Truce Agreement reproduced above makes it crystal clear that the pay of the appellant as on April 1, 1957 in the then existing scale of Rs. 150-10-200 being admittedly Rs. 150/- i.e. less than the minimum pay of the revised scale of Rs. 175-15-325, it had, according to clause 4(a) of the agreement, to be fixed at Rs. 175/- which is the minimum of the aforementioned revised scale. Now the appellant having put in more than six years' service and his case being clearly outside the pale of the prohibition envisaged by the first part of sub-clause (c) of clause 4 of the Agreement, he had to be granted the benefit of three advance increments in terms of the formula contained in sub-clause (b) of clause 4 of the Agreement which would take his initial pay to Rs. 220/-. The second part of sub-clause (c) of clause 4 of the Agreement which is heavily relied upon on behalf of the Corporation has no applicability to the present case as that part would operate only in those cases which fall within the prohibition contemplated by the first part of sub-clause (c) of clause 4 i.e. where the increase in the minimum pay in the revised scale over the pay in the scale which existed on April 1, 1957 exceeds Rs. 25/- plus one increment in the new scale i.e. if it exceeds Rs. 25/- plus Rs. 15/- totalling Rs. 40/-. As in the instant case the increase of the minimum pay in the new scale does not exceed Rs. 40/-, the second part of sub-clause (c) of clause 4 which is residuary cannot be invoked by the Corporation. The High Court was, therefore, patently in error in holding

that the case of the appellant was covered not by the first part of subclause (c) of clause 4 but by the second part thereof. In so holding, it 'Obviously overlooked the significance of the words "in other cases" occurring at the commencement of the second part of sub-clause (c) of clause 4. The said words make it abundantly clear that it is only where a case does not fall within the purview of the first part of subclause (c) of clause 4 that it would be governed by the second part

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of the sub-clause. As the case of the appellant was not covered by the ban imposed by the first part of sub-clause (c) of clause 4 of the Industrial Truce Agreement, he could not have been denied the benefit of the advance increments which accrued to him under sub-clause (b) thereof. Accordingly, the order of the High Court which suffers from a patent error cannot be sustained.

In the result, we allow the appeal, set aside the judgment and order of the High Court and restore that of the Labour Court. In view of the fact that the appellant has failed to appear, we make no order as to costs.

S.R. Appeal allowed.

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