A **BOMBAY LABOUR UNION REPRESENTING THE WORKMEN OF MESSRS INTERNATIONAL FRANCHISES PVT. LTD.**

v.

MESSRS INTERNATIONAL FRANCHISES PVT. LTD

B *November* 3, 1965

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

Industrial Dispute—Rule terminating employment of women automatically on marriage—Validity of rule—Industrial adjudication whether C *should interfere.*

The respondent concern had a rule in its packing and labelling department that if a woman employee got married her service would stand automatically terminated. The appellant union raised an industrial dispute on this question and it was referred to the Industrial Tribunal, Maharashtra. The Tribunal held that the rule was justified whereupon, the appellant came to this Court by special leave.

D The justification given on behalf of the respondent for the said rule was that in the particular department where the rule operated team work was required for which regular attendance was necessary, and married women, for obvious reasons, could not be expected to be regular in attendance. It was also contended for the respondent that industrial adjudication should not interfere with the employer's right to impose any condition in the matter of employment when he employs new workmen. Rule 5(3) of the Indian Administrative Service (Recruitment) E Rules, 1964, was referred to as carrying a similar condition.

HELD : (i) There was nothing to show that married women would necessarily be more likely to be absent than unmarried women or widows. The only difference was that married women would ask for maternity leave. This could be provided for by having a few extra women as leave reserve. So far as efficiency was concerned it could hardly be said that married women would be less efficient than unmarried ones or widows. The F economic interest of the concern was also not affected in any material way. There was thus no good and convincing reason why such a rule should continue in one department of the pharmaceutical industry. The fact that such a rule existed in other concerns also was no justification. if the rule could not be justified on its own merits. The rule, therefore, had to be abrogated. [495E, G-H; 496A-B, D]

(ii) It is too late in the day to stress the absolute freedom of an em- G ployer to impose any condition which he likes on labour. It is always open to industrial adjudication to consider the conditions of employment of labour and to vary them if it is found necessary. [496 E-F]

(iii) Rule 5(3) of the Indian Administrative Service (Recruitment) Rules only lays down that where an unmarried woman marries subsequently, the Central Government may, if the maintenance of the efficiency of the service so requires, call upon her to resign. This rule does not compel unmarried women to resign on marriage as a matter of H course as in the case of the respondent concern. [497 B-C]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 274 of 1964.

Appeal by special leave from the award dated May 31, 1963 of the Industrial Tribunal, Maharashtra in Reference (I.T.) No. 59 of 1963. A

S. B. Naik and *K. R. Chaudhury*, for the appellants.

S. V. Gupte, Solicitor-General, G. B. Pai, J. B. Dadachanji, O. C. Mathur and *Ravinder Narain*, for respondent No. 1. B

A. S. R. Chari, K. Rajendra Chaudhury, M. S. K. Aiyangar and *M. R. K. Pillai*, for respondent No. 2.

A. S. R. Chari, M. K. Ramamurthi, for interveners.

The Judgment of the Court was delivered by C

Wanchoo, J. The only question raised in this appeal by special leave is the propriety of a service condition in the respondent-concern by which unmarried women in a particular department have to resign on their getting married. A dispute was raised about this condition by the appellant-union on behalf of the workmen and was referred to the Industrial Tribunal, Maharashtra, in the following terms :— D

> "The existing bar on ladies that on their getting married they have to leave the service of the company should be removed."

The respondent is a pharmaceutical concern. It appears that E there is a rule in force in the respondent-concern according to which if a lady workman gets married, her services are treated as automatically terminated. It appears that such a rule is in force in other pharmaceutical concerns in that region and the matter came up on two occasions before industrial tribunals for adjudication with reference to other pharmaceutical concerns, and on F both occasions the challenge by the workmen to such a rule failed. On the first occasion the dispute was between *the Boots Pure Drug Co. (India) Limited* v. *Their Workmen*(1) and a similar rule was upheld in 1956. On the second occasion the dispute was between *Sandoz (India) Limited* v. *Workmen employed under it*(2). There was agitation in the respondent concern in G connection with this rule and the present reference was eventually made in February 1963. The tribunal followed its earlier decision in *Sandoz Limited's case*(2) and rejected the contention that the rule be abrogated. The appellant obtained special leave to appeal from this Court; and that is how the matter has come up before us. H

(1) B.G.G. Part I –L, dated Jan. 26, 1966.
(2) (1962) Industr ial Court Reporter 22.

A Ordinarily we see no reason for such a rule requiring unmarried women to give up service on marriage, particularly when it is not disputed that no such rule exists in other industries. It is also not in dispute that no such rule exists in other departments of the respondent-concern itself and it is only in one department that the rule is in force. It can only be upheld if the respondent B shows that there are good and convincing reasons why in this particular department of the pharmaceutical industry it is necessary to have such a rule. The only reason given for enforcement of this rule in this department of the respondent-concern is that the workmen have to work in teams in this department and that requires that they should be regular and that this cannot be ex- C pected from married women for obvious reasons, and that there is greater absenteeism among married women than among unmarried women or widows against whom there is no bar of this kind.

We are not impressed by these reasons for retaining a rule of D this kind. The work in this department is not arduous for the department is concerned with packing, labelling, putting in phials and other work of this kind which has to be done after the pharmaceutical product has been manufactured. Nor do we think that because the work has to be done as a team it cannot be done by married women. We also feel that there is nothing to E show that married women would necessarily be more likely to be absent than unmarried women or widows. If it is the presence of children which may be said to account for greater absenteeism among married women, that would be so more or less in the case of widows with children also. The fact that the work has got to be done as a team and presence of all those workmen is neces- F sary, is in our opinion no disqualification so far as married women are concerned. It cannot be disputed that even unmarried women or widows are entitled to such leave as the respondent's rules provide and they would be availing themselves of these leave facilities. The only difference in the matter of absenteeism that we can see between married women on the one hand and unmarried G women and widows on the other is in the matter of maternity leave which is an extra facility available to married women. To this extent only, married women are more likely to be absent than unmarried women and widows. But such absence can in our opinion be easily provided for by having a few extra women as leave reserve and can thus hardly be a ground for such a drastic H rule as the present which requires an unmarried woman to resign as soon as she marries. We have been unable to understand how it can be said that it is necessary in the interest of efficient ope-

ration and in the company's economic interest not to employ married women. So far as efficient operation is concerned, it can hardly be said that married women would be less efficient than unmarried women or widows so far as pure efficiency in work is concerned, apart of course from the question of maternity leave. As to the economic interest of the concern, we fail to see what difference the employment of married women will make in that connection for the emoluments whether of an unmarried woman or of a married woman are the same. The only difference between the two as we have already said is the burden on account of maternity leave. But as to that the respondent contends that the reason for having this rule is not the respondent's desire to avoid the small burden to be placed on it on account of maternity leave. If that is so, we fail to see any justification for a rule of this kind which requires an unmarried woman to give up service immediately she marries. We are therefore of opinion that there is no good and convincing reason why such a rule should continue in one department of the pharmaceutical industry. The fact that such a rule exists in other such concerns is no justification, if the rule cannot be justified on its own merits.

Then it is urged that the employer was free to impose any condition in the matter of employment when he employs a new workman and that industrial adjudication should not interfere with this right of the employer. All that need be said in this connection is that it is too late in the day now to stress the absolute freedom of an employer to impose any condition which he likes on labour. It is always open to industrial adjudication to consider the conditions of employment of labour and to vary them if it is found necessary, unless the employer can justify an extraordinary condition like this by reasons which carry conviction. In the present case the reasons which the respondent has advanced and which were the basis of the two decisions referred to earlier do not commend themselves to us as sufficient for such a rule. We are therefore of opinion that such a rule should be abrogated in the interest of social justice.

Lastly it is urged that a similar rule exists in certain government services and in this connection our attention is drawn in particular to r. 5(3) of the 1954 Indian Administrative Service (Recruitment) Rules. That rule reads as follows :—

> "No married woman shall be entitled as of right to be appointed to the Service, and where a woman appointed to the Service subsequently marries, the Central Government may, if the maintenance of the

A efficiency of the Service so requires, call upon her to resign."

It will be seen that this rule for the Indian Administrative Service is not unqualified like the rule in force in the respondent's concern. It only lays down that where an unmarried woman marries B subsequently, the Central Government may, if the maintenance of the efficiency of the Service so requires call upon her to resign. Therefore this rule does not compel unmarried women to resign on marriage as a matter of course as is the case in the respondent-concern. It is only when the Central Government considers that marriage has impaired the efficiency of the woman concerned that C the Central Government may call upon her to resign. The rule which is in force in the respondent-concern however assumes that merely by marriage the efficiency of the woman-employee is impaired and such an assumption in our opinion is not justified. At any rate this rule for the Indian Administrative Service which has been brought to our notice only for purposes of comparison does D not justify the drastic rule that we have in the present case where an unmarried woman is compelled to resign immediately she marries without regard to her continued efficiency.

On a careful consideration of the reasons advanced on behalf of the respondent in support of the existing rule we are of opinion E that the reasons do not justify such a drastic rule. We therefore allow the appeal and direct that the rule in question in the form in which it exists at present be abrogated. The abrogation shall take effect from the date of this judgment. The appellants will get their costs from the respondent-company.

Appeal allowed.