Muir Mills Co. Ltd., Kanpur vs Its Workmen on 7 April, 1960

Equivalent citations: 1960 AIR 985, 1960 SCR (3) 488, AIR 1960 SUPREME COURT 985, 1961 (1) SCJ 1, 1960-61 18 FJR 362, 1960 2 LABLJ 586, 1960 3 SCR 488

Author: K.C. Das Gupta

Bench: K.C. Das Gupta, P.B. Gajendragadkar, K.N. Wanchoo

PETITIONER:
MUIR MILLS CO. LTD., KANPUR

Vs.

RESPONDENT:
ITS WORKMEN.

DATE OF JUDGMENT:
07/04/1960

BENCH:
GUPTA, K.C. DAS
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GUPTA, K.C. DAS
GAJENDRAGADKAR, P.B.
WANCHOO, K.N.

CITATION:
1960 AIR 985 1960 SCR (3) 488

ACT:
Industrial Dispute-Wage structure-Production bonus and incentive bonus, if could be taken into consideration when fixing new basic wage-Intention of Government if can be interpreted to Prejudice interest of Labour, Industry and Country-U.P. Industrial Disputes Act, 1947 (U. P. 28 of 1947).

HEADNOTE:
The appellant paid wages to its workmen in the Carding Department on piece rate basis and in addition, the workmen were entitled to receive further emoluments if their production exceeded a certain norm. The right to receive these additional emoluments had become a part of the terms of service of these workmen. In 1948 the Government of Uttar Pradesh with a view to make it obligatory on the

employers in the different industries to keep the wages of workmen at a certain level, by its order under the provisions of s. 3 of the U.P. Industrial Disputes Act, 1947, laid down the standard of basic wages and dearness allowance for different industries in the province. The appellant in giving effect to the said order of the Government for introducing the new piece rate raised the fixed piece rate but stopped the system of paying additional emoluments, as it thought itself to be justified, in taking into consideration for this purpose the amounts actually earned by the workers including what had been earned as additional emoluments which were being paid to the workmen by way of productive and incentive bonuses. The workmen's case was that by stopping the additional emoluments which they used to get on the basis of better production by extra efforts the employer had in fact reduced the wages to which they were entitled and the fact that higher piece rates were introduced did not affect the question. The question was whether the Government order required or authorised the company to. include the incentive bonus and the production bonus which they had been so long paying in fixing the new piece rate for the purpose of compliance with the directions given in the Government order as regards the basic wages:

Held, that the Government. order did not require or justify the employer including the production and incentive bonuses in the calculation of the rates of the basic wage of the workers and consequently the Government order did not have the effect of absolving the company from the duty of continuing to pay the production and incentive bonuses to workmen as before:

Held, further, that the concept of " basic " is not peculiar to wages alone; it is what is normally allowable to all, irrespective of special claims and is also ordinarily understood to mean that part of the price of labour, which the employer must pay to all

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workmen belonging to all categories. The phrase is used ordinarily in marked contradistinction to " dearness allowance " the quantum of which varies from time to time, in accordance with the rise or fall in the cost of living. Thus understood " basic wage" never includes the additional emoluments which some workmen may earn, on the basis of a system of bonuses related to the production.

Titaghur Paper Mills Co. Ltd. v. Their Workmen, [1959] SUPP. (2) S.C.R. 1012, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 305 of 1959. Appeal by special leave from the Decision dated January 10, 1957, of the Labour Appellate Tribunal of India, Bombay, in Appeal No.

111-346 of 1955.

G. S. Pathak, S. P. Sinha and K. K. Sinha for G. N. Dikshit, for the appellants.

Maqbool Ahmad Khan (General Secretary of the Union), for respondent No. 1.

J. P. Goyal, for respondent No. 2.

1960. April 7. The Judgment of the Court was delivered by DAS GUPTA, J.-This appeal by the employer, the Muir Mills Co., Ltd., Kanpur, is against the decision of the Labour Appellate Tribunal of India, Bombay, modifying an award of the Adjudicator, Kanpur, in a reference made by the Government of: U. P. under the provisions of ss. 3, 4 and 8 of the Industrial Disputes Act, 1947. The matter in dispute referred was originally set out in these terms :-

> " Whether the employers have wrongfully and/or unjustifiably reduced the wages of their workmen of Carding Department, given in the annexure ? If so, to what relief are the workmen entitled and from what date ? "

By an order dated April 25, 1955, the Government amended this issue by substituting therefor the following:-

> " Whether the employers have wrongfully and/or unjustifiably reduced the wages of their workmen of Carding Department, given in the annexure., by discontinuing the payment of production and/or special bonus, if so, to what relief are the workmen entitled and from what date ?
>
> It will be noticed that the issue as re-framed by the amendment indicated the manner in which the reduction in the wages of these workmen had been alleged to be made, viz., by " discontinuing the payment of production and/or special bonus ". To understand how the question of such a reduction arose and also the considerations which arise in deciding the question whether the reduction, if any, was wrongful and/or unjustifiable a few facts need to be mentioned: The appellant company is a textile mill employing in its Carding Department workmen known as Inter Tenters, Roving Tenters, Draw Frame Tenters and Slubbers. All these workmen are paid wages on piece rate basis. Before 1948 the rates in force per hank were -/2/3/- for the Inter Tenters, -/2/3/- for the Slubbers and Draw Frame Tenters and -/2/5/- for the Roving Tenters. In addition to this these workmen were entitled to receive further emoluments if their production exceeded a certain norm. The rates for these further emoluments then in force were two annas per rupee of basic earnings of Rs. 15 to Rs. 25 per month and three annas per rupee for basic earnings above Rs. 25 per month. Apart from these emoluments payment was also made at 9 pies per hank if the production on any day was 7 hanks or more. Though both these additional emoluments were related to production the Tribunals below have described the first kind as production bonus and the second kind as incentive bonus and it will be

convenient to adhere to that description here. These two kinds of additional payments which the workmen would receive only if their production would reach and surpass certain standards had the result of increasing the total emoluments received by some of the workmen much above, what they would be getting under the fixed rate per hank. The right to receive these additional emoluments had become a part of the -terms of service of these workmen. With effect from December 1, 1948, however the appellant-company stopped the system of paying such additional emoluments but instead -raised the fixed rate per hank to -/3/9/- for Inter Tenters, -/3/6/- for Slubbers and Draw Frame Tenters and

-/4/9/- for Roving Tenters. This was done immediately after an order had been made by the Government under the provisions of s. 3 of the U. P. Industrial Disputes Act, 1947, laying down the standards of basic wages and dearness allowance for different industries in the Province. Clause 2 of this order fixed the minimum basic wage for cotton and woollen textile industries in Kanpur and certain other areas at Rs. 30 per month. Clause 3 provided for payment of dear food allowance. Clause 5 provided that persons who are already employed on November 30, 1948, in any industrial textile concern shall receive wages at the increased rates mentioned therein. Clause 7 provided that " every employee of an industrial concern or undertaking to which this order applies, shall be paid wages including dear food allowance in accordance with the provisions of cls. (2), (3), (5) and (6). " There is a proviso to the clause which says that where the consolidated wage payable to an employee who was on the pay roll of the concern or undertaking on November 30, 1948, is more than the consolidated wage payable in accordance with the provisions of the said clauses, the difference shall be paid to him as personal wage. Clause 8 defines " basic wages "

as " consolidated wages payable to an employee on November 30, 1948, minus Dear Food Allowance calculated according to the rates prevalent in the concern on the said date. The workmen's case is that by stopping the additional emoluments which they used to get on the basis of better production by extra efforts the employer had in fact reduced the wages to which they were entitled and the fact that higher piece-rate were -introduced with effect from December 1, 1948, does not affect the question. The employer's contention is that by the Government order it was-required to introduce new piece-rates after taking into consideration the amounts actually earned by workers including what had been earned by additional emoluments and so the stoppage of these additional emoluments did not amount to any reduction. The Adjudicator held that these additional emoluments payable as production bonus and incentive bonus had not been taken into consideration by the company while arriving at the revised piece-rates. He held further that these could not be taken into con- sideration in law as the Government order did not contemplate these bonuses to be taken into consideration in arriving at the appropriate figure for basic wages for the purpose of the order. In that view the Adjudicator held that there had been an Unjustifiable reduction in the wages of the workmen and directed the management to restore with effect from December 1, 1948, " the system of granting production and incentive bonuses to such of the workmen who are entitled to it ". He also gave directions as to how the calculations should be made for the purpose of incentive bonus and production bonus.

The Appellate Tribunal thought it unnecessary to consider the question whether these bonuses had been actually taken into consideration while fixing new piece rates, being of opinion that if the Government order did not require or justify the employer's including these bonuses in the calculation of the new rates the company would be bound in law to restore these bonuses even if they had actually taken them into consideration. It held that the Government order did not require or justify the employer including these bonuses in the calculation of the rates of wages for the purposes of the Government order. In the result the appellate tribunal agreed with the first tribunal's decision that this system of granting production and incentive bonuses must be restored. In view of the fact however that for a long time after December 1, 1948, the workmen did not raise this question the appellate tribunal was of opinion that the restoration should be only with effect from February 1, 1954. As regards the rates at which these bonuses had to be calculated they also modified the directions given by the Tribunal.

The main contention raised before us on behalf of the appellant-company is that the appellate tribunal was wrong in thinking that the Government order did not require or justify the company in including the additional emoluments being paid by way of production bonus and the incentive bonus in the calculation of the rates of basic wages for the purpose of the order, Before we proceed to consider this question it is proper to mention a preliminary contention which was sought to be raised by Mr. Pathak, on behalf of the appellant. Referring to a note made by the Adjudicator on August 27, 1955, he wanted to argue that it was not open to the tribunals below to consider at all the question whether under the Government order the appellant could have included the incentive bonus in the calculation of the basic rate. The note is in these words :-

> " The parties are represented. The calculations have been filed by them which were made in the presence of the Adjudicator. There is no difference between the parties that while calculating the rates with effect from 1-12-48 if production and incentive bonus have been considered the question of any relief does not arise, and vice versa. The workers say that in the said wages, these bonuses have not been included while the employers contend that they have been included.
>
> The latter have not filed the required information. Proceedings closed."

At first sight, this does seem to give a basis for an argument that the parties agreed before the Tribunal to treat the matter as a question of fact only and that the workmen did not want to raise any question that under the Government order these bonuses could not be included in the calculation of the rates. It is unnecessary however for us to examine the effect of such concession in view of what transpired before the appellate tribunal. From the judgment of that Tribunal we find that on behalf of the workmen it was stated that they had not conceded any such position in the lower tribunal and that their contention was that such bonuses had not and could not be taken into consideration. It is also clear from the judgment that in view of this the parties argued their appeal before the appellate tribunal on both these contentions, viz., whether the Government order in question allowed the employers to include the bonuses in question in the calculation of the new rates of basic wages in the case of the piece-rate workers like those concerned in this and if so, whether the employers have in 63 fact taken these bonuses into account. It is clear that the

contention that in view of the concession made on August 27, 1955, it was not open to the appellate tribunal to go into the question whether the Government order required or authorised the employer's including the bonuses in the calculation of the new rates was abandoned before the tribunal below. When it was pointed out to Mr. Pathak that in view of this, he should not be allowed to raise this contention Mr. Pathak fairly abandoned this contention here also.

The real question therefore is whether the Government order required or authorised the company to include the incentive bonus and the production bonus which they had been so long paying in fixing the new piece rate for the purpose of compliance with the directions given in the Government order as regards the basic wages. In finding the correct answer to this question it is necessary to examine the entire scheme of the Government order. The relevant clauses of the Government order have already been set out. The purpose of the scheme, on the face of it, is to make it obligatory on the employers in different industries to keep wages of workmen at a certain level. This purpose is sought to be achieved by laying down on the one hand the basic wages Which must be paid and on' the other hand the dearness allowance-called in the Government order dear food allowance-which must be paid. The concept of basic wage is familiar to employers and workmen and all who have to deal with the problems of labour's remuneration. It may be profitably remembered in this connection that the concept of a " basic " is not peculiar to wages alone. For instance, when any rationing system is introduced for any commodity, whether it is food, or coal, or petrol or some other commodity, it is usual to fix a quantum as the basic ration. The underlying idea is to fix some amount as what every individual coming under the system will get; while additional amounts to be fixed in accordance with further directions will be allowed to some individuals, in view of their special claims as supplementary rations. " Basic " in all such cases is what is normally allowable to all- irrespective of special claims. The phrase "I basic wages " is also ordinarily understood to mean that part of the price of labour, which the employer must pay to all work-' men belonging to all categories. The phrase is used ordinarily in marked contra-distinction to " dearness allowance ", the quantum of which varies from time to time, in accordance with the rise or fall in the cost of living.

Thus understood " basic wage" never includes the additional emoluments which some workmen may earn, on the basis of a system of bonuses related to the production. The quantum of earnings in such bonuses varies from individual to individual according to their efficiency and diligence ; it will vary sometimes from season to season with the variations of working conditions in the factory or other place where the work is done; it will vary also with variations in the rate of supplies of raw material or in the assistance obtainable from machinery. This very element of variation, excludes this part of workmen's emoluments from the connotation of " basic wages ". But, says the appellant, whatever may be ordinarily under. stood by the word " basic wages " hardly matters when the Government order itself contains a definition of " basic wage ". Clause 8, which has already been referred to is in these words:-" Basic Wages "

> for the purposes of this order will mean consolidated wages payable to an employee on November 30, 1948, minus Dear Food Allowance calculated according to the rates prevalent in the concern on the said date." On behalf of the appellant Mr. Pathak concentrates on the words " consolidated wage ", and argues that everything which answers to the description of wage must be included in this process of consolidation.

> Contending next that the emoluments payable by way of production bonus and incentive bonus are " wages even if not ordinarily understood to be basic wages he argues that the result of the definition in cl. 8 is that basic wages for this order is the sum total of all emoluments answering to the description of wages thus including production and incentive bonuses, but excluding by reason of the express words used " dearness allowance, In support of his argument that production or incentive bonuses which used to be paid by the company is also a kind of wage the learned advocate has placed strong reliance on some observations made by this Court in Titaghur Paper Mills Co., Ltd. v. Their Workmen (1) that a production bonus is in the nature of an incentive wage.
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> We will presently consider how far the fact that these bonuses are in the nature of an incentive wage assists the appellant's contention that it has to be included in the "

consolidated wage" within the meaning of cl. 8 of the order. But before we do that, it will be proper to see exactly what this Court said in the above case. A question had been raised as regards the jurisdiction of the Industrial Tribunals to go into the question of any production bonus claim at all, that being a matter of agreement between the employer and the employees. In considering this question this Court thought fit to consider first what a production bonus essentially is. In the course of that discussion the Court said:-

> " Before we go into the question of jurisdiction of a tribunal under the Industrial Disputes Act, 1947 (hereinafter called the Act), we should like to consider what production bonus essentially is. The payment of production bonus depends upon production and is in addition to wages. In effect it is an incentive to higher production and is in the nature of an incentive wage."
>
> "There is a base or standard above which extra payment is made for extra production in addition to the basic wage. Such a plan typically guarantees time wage up to the time represented by standard performance and gives workers a share in the savings represented by superior performance."
>
> "Therefore generally speaking, payment of production bonus is nothing more or less than a payment of further emoluments depending upon production as an incentive to the workmen to put in more than the standard performance. Production (1) [1959] SUPP. 2 S.C.R. 1012 bonus in this case also is of this nature and is nothing more than additional emolument paid as an incentive for higher production. We shall later consider the argument whether in this case the production bonus is anything other than profit bonus. It is enough to say at this stage that the bonus under the scheme in this case also depends essen-

tially on production and therefore is in the nature of incentive bonus."

It is important to notice that while the learned counsel is undoubtedly right in saying that a bonus related to production was described in this case as in the nature of an incentive wage, the Court was equally emphatic in laying down that such bonuses form no part of wages as ordinarily understood and again that these are in addition to basic wages. Can it be reasonably said that even such "incentive wage" though not forming part of basic wage' as ordinarily understood was intended to be included in the consolidation of wages which cl. 8 speaks of? The answer must be in the negative. While it is true that the word " consolidated wage " taken away from the context would import the inclusion of every kind of wage, we have to remember that here it is basic wage which is being, defined. It will be unreasonable to think that in defining basic wage the Government would include something which is always understood to be outside the ordinary concept of basic wage. Remembering as we must that it is basic wage which is being defined here it is reasonable to think that only such emolu- ments which are receivable by the workmen generally, as a normal feature of their earnings and therefore satisfy the characteristics of " basic wage ", are intended to be covered by the consolidation. It is because dear food allowance does not satisfy this characteristic that this has been expressly excluded. Mr. Pathak's argument that when in the case of dearness allowance an express exclusion has been made, everything else in the nature of wages has to be included would have been of great force but for the fact that when "basic wage" is being defined the presumption must be that anything which is essentially different and distinct from basic wage was not intended to be included.

It is worth mentioning also that the notification does not in terms refer to piece rate system of payment. That itself is a reason for thinking that production bonuses which are an essential feature of piece rate system but not of time rate system, were not in the contemplation of those who drafted the order.

Equally pertinent is the consideration that when the Government is evolving a scheme to improve the wage structure of workmen it would not knowingly do anything which would have the effect of removing incentives to production. Such removal would harm labour by preventing workmen from earning more by extra efforts, harm capital by diminishing the return therefrom and harm the country as a whole at a time when higher production is the crying need of every branch of industry. An interpretation which would impute to Government such an unthinkable intention to harm all concerned, cannot be lightly accepted; but that would be the necessary result if " consolidated wages " in the definition of basic wages is interpreted to include even an incentive wage like bonus related to production. On every consideration it is therefore abundantly clear that production bonus and incentive bonus were not within basic wages as defined in the Government order.

It was faintly argued by Mr. Pathak that the fact that the workmen did not for a number of years raise any objection to the stoppage of the old system of production bonus and incentive bonus shows that they themselves understood the Government order to mean that these bonuses would be included in fixing the basic wages for the purpose of the order. Whether that was so or not it is unnecessary for us to consider, for when the only reasonable interpretation of the words used in the order is that these are not to be included, it matters little how the 'employer or the workmen understood these words to mean.

We have therefore come to the conclusion that the Labour Appellate Tribunal was right in holding that the Government order did not require or justify th employer including the production and incentive bonuses in the calculation of the rates of the basic wage of the workers and consequently that the Government order did not have the effect of absolving the company from the duty of continuing to pay the production and incentive bonuses to workmen as before.

No objection has been raised before us as regards the directions given by the appellate tribunal for the calculation of these bonuses.

The appeal is accordingly dismissed with costs. Apppeal dismissed.