The Management Of Tocklai Experimental ... vs The Workmen And Another(And Connected ... on 24 November, 1961

Equivalent citations: 1962 AIR 759, 1962 SCR SUPL. (1) 545, AIR 1962 SUPREME COURT 1340, 1961 2 LABLJ 694 1961-62 21 FJR 405, 1961-62 21 FJR 405

Author: M. Hidayatullah

Bench: M. Hidayatullah, J.L. Kapur, J.C. Shah

PETITIONER:
THE MANAGEMENT OF TOCKLAI EXPERIMENTAL STATIONREPRESENTED BY

Vs.

RESPONDENT:
THE WORKMEN AND ANOTHER(And connected appeal)

DATE OF JUDGMENT:
24/11/1961

BENCH:
HIDAYATULLAH, M.
BENCH:
HIDAYATULLAH, M.
KAPUR, J.L.
SHAH, J.C.

CITATION:
1962 AIR 759 1962 SCR Supl. (1) 545
CITATOR INFO :
D 1965 SC 1 (11,12,19)

ACT:
Industrial Dispute-Bonus-Puja bonus-Basis of the claim-Profit bonue-Housing accommodation-House allowance.

HEADNOTE:
The appellant, a research institution established for the purpose of improving the quality of tea, was managed by the India Tea Assciation. The employees made claims, inter
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alia, for (1) free housing accommodation or

adequate allowance in lieu thereof, and (2) grant of bonus. The tribunal, to which the matter was referred by the Government considered the financial position of the appellant and came to the conclusion that the demand for housing accommodation was not justified and that the ends of justice would be met if a flat rate of enhancement of Rs. 20/- was awarded. As regards the demand for bonus the tribunal felt that it would be inexpedient to apply the formula which governed the decision of industrial claims for the payment of bonus, but made an award directing the appellant to pay puja bonus to its employees on the ground that what was described as puja bonus was being given to workmen who were similarly situated as also to the clarical staff working at the Indian Tea Association at Calcutta and that refusing the workmen's claim for bonus against the appellant would amount to discrimination.

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Held, that a demand for the provision of housing accommodation can be reasonably entertained where it appeared that the financial position of the employer can bear the burden involved, that under the present economic conditions prevailing in the industry the responsibility for providing housing accommodation cannot be placed solely on the shoulders of the employer, and that in due course the problem would have to be tackled by the industry in cooperation with the State, which would have to bear a part of that responsibility.

The Patna Electric Supply Co., Ltd. Patna v. The Patna Electric Supply Workers' Union, [1959] Supp. 2. S.C. R. 761, relied on.

Held, further, that before a claim for the grant of puja bonus could be sustained it must be shown (1) that it was consistently paid by the employer to his employees from year to year at the same rate, and (2) that it had been paid even in years of loss and that it had no relation to the profit made by the employer during the relevant year.

A claim for puja bonus could also be made on the ground that the payment of such bonus was an implied term in the contract of employment.

The Graham Trading Co. (Indian) Ltd. v. Its Workmen, [1960] 1 S.C.R. 107 and M/s. Ispahani Ltd., Calcatta v. Ispahani Employees' Union, [1960] 1 S.C.R. 24, followed.

Industrial profit bonus which is governed by the application of the well known formula, cannot be awarded unless a specific year for which the

claim is made is indicated and it is alleged that there is available surplus in the hands of the employer for that year.
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JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 459 and 460 of 1960 Appeals by special leave from the award dated March 10, 1959, of the Industrial Tribunal, Assam, in Reference No. 16 of 1958.

M. C. Setalvad, Attorney General for India, B. Sen, S. N. Mukherji and B. N. Ghosh, for the management appellant (in C. A. No. 459 of 60) and the respondent (in C. A. No. 460 of 1960).

S. T. Desai, A. K. Dutt and Janardan Sharma, for the workmen respondents (in C. A. No. 459 of

60) and the appellants (in C. A. No. 460 of 1960).

1961. November 24. The Judgment of the Court was delivered by GAJENDRAGADKAR, J.-Civil Appeals Nos. 459 and 460 of 1960 are cross appeals and they arise out of an award pronounced by the Industrial Tribunal, Assam, in an industrial dispute referred by the Assam Government for its adjudication. This industrial dispute was raised against the management of the Tocklai Experimental Station (hereafter called the Station) by its workmen. Six out of the demands made by the workmen formed the subject matter of reference. In the present appeals we are concerned with three of them. Demand No. 1 (a) was that the employees' junior staff of the Station should be given pension in lieu of the existing practice of paying gratuity. This demand has been rejected be the tribunal. The other demand made by the employees was No. 3(b) and it had reference to the claim for free housing accommodation or adequate allowance in lieu thereof. This demand has been partially allowed by the tribunal and it has directed that house allowance in each case shall be raised at the flat rate of Rs. 20/- instead of Rs. 101/-. The decision of the tribunal in respect of these two demands did not satisfy the workmen and so by special leave of this Court they have filed Civil Appeal No. 460 of 1960. The demand of the junior staff for bonus which was resisted by the Station has been partially allowed by the tribunal. It has ordered that the Station shall give punja bonus at the same rate as the employees working for the Indian Tea Association at Calcutta are getting. This part of the award is challenged by the Station in its appeal by special leave by Civil Appeal No. 459 of 1960. That is how the two cross-appeals arise.

We will deal first with the Station's Appeal in respect of bonus. The learned Attorney-General contends that in making the demand for bonus the workmen have entirely misconceived the true position of the industrial law on the point, and he argues that the Assam Government was not justified in making the reference in the form it has been made and the tribunal was not justified in making the award in the manner it has done. The workmen made their demand for bonus in these words: "The Union requests the introduction of bonus for the Tocklai Staff on the following grounds". Then follow six grounds. It was urged that the Station is an arm of the tea industry and is

maintained by the members of the I.T.A. who give bonus to their employees, that the Station exists and works for the advancement of the tea industry and increasing its profits and thus is an industry, that the I.T.A. employees at Calcutta office are given bonus, that the employees of the Bengal Chamber of Commerce receive bonus, that the employees of Shamshernagar and Tulsipara branches of this very Station used to be given bonus so long as these branches were functioning and that the personnel of the scientific research laboratories attached to many industrial concerns receive bonus, and so the workmen in the present case were entitled to make a claim in that behalf. In appreciating this claim it is necessary to state that the Station is a research institution established by the Indian Tea Association to make research for the purpose of improving the quality of tea and its production and the said Station is managed by the parent Association and is maintained by means of voluntary subscriptions from members of the said Association. Broadly stated the ground on which the workmen claimed bonus was that the employees of the Association were receiving bonus and that the personnel of scientific research laboratories similarly situated in other industrial concerns were also given bonus.

When the Assam Government made the present reference it included within the scope of the reference this claim of bonus along with the other claims made by the workmen. The issue referred for adjudication on this point was thus framed:

> "2(a). Whether the demand of the employees (Junior Staff) for bonus is justified ? If so, at what rate should the same be paid ?"

The tribunal considered this demand and partially allowed it by directing that the workmen should be paid puja bonus at the same rate as the employees working in the I.T.A. at Calcutta are getting. In dealing with this question the tribunal has held that the Station is an industry within the meaning of the Industrial Disputes Act and so it could not resist the demand made by its workmen on the ground that it is an academic body devoted to research and as such outside the purview of the Act. This position is not disputed before us by the Station because it is concluded by a decision of this Court in The Ahmedabad Textile Industry's Research Association v. The State of Bombay (1). The tribunal has, however, found in favour of the Station that it would be inexpedient, if not impossible, to apply the formula which governs the decision of industrial claims for the payment of bonus. "There are obvious difficulties", says the tribunal, "in applying the formula laid down by their Lordships of the Supreme Court to an experimental station run by the Association"; but it added that "it could not be overlooked that payment of bonus to members of the experimental staff is being made by some companies". Then the tribunal referred to some instances where bonus is paid to workmen who, in the opinion of the tribunal, were similarly situated, and it came to the conclusion that refusing the workmen's claim for bonus against the Station would amount to discrimination. The tribunal then took into account the fact that what is described as puja bonus is paid to members of the staff of the Bengal Chamber of Commerce because it was admitted before it that the junior staff of the Bengal Chamber of Commerce which presumably was also serving the I.T.A. at Calcutta was receiving a fixed annual gratuity characterised as puja bonus. The tribunal conceded that the claim for this kind of bonus "may not directly satisfy the requirements of law", but it added that "the fact that what was described as puja bonus was given at the sub-stations and is also given to the clerical staff working at the I.T.A. at Calcutta, supports the demand to this extent at least that the

same treatment may be meted out to them." It is on this reasoning that the tribunal ultimately made the award in favour of the workmen directing the Station to pay puja bonus to its employees.

It would be noticed that the demand originally made by the workmen appears to be in the nature of a demand for bonus which is usually described as industrial profit bonus the payment of which is governed by the application of the well known formula. Such a demand is invariably made, and has to be made, by reference to a particular year because the formula which determines claims for profit bonus postulates the examination of the available surplus in the hands of the employer from which bonus may be directed to be paid to the employees. A claim for profit bonus cannot be validly made unless a specific year for which the claim is made is indicated and it is alleged that there is available surplus in the hands of the employer during that year. It is unfortunate that this elementary aspect was overlooked by the workmen when they made the claim and has not been noticed even by the Assam Government when it made the reference in respect of this claim. This serious infirmity in the claim is present even in the award made by the tribunal because the award does not say for what year the bonus should be paid, and like the claim made by the workmen in very general terms for the introduction of bonus the award also seems to make a direction in similar terms for the payment of bonus. In our opinion, this is a patent infirmity in the award. Profit bonus, it is hardly necessary to emphasise, can be awarded only by reference to a relevant year and a claim for such bonus has, therefore, to be made from year to year and has to be settled either amicably between the parties or, if a reference is made, it has to be determined by industrial adjudication. A general claim for the introduction of profit bonus cannot be made or entertained in the form in which it has been done in the present proceedings.

Besides, the other serious infirmity in the award is that when a claim for profit bonus was made the tribunal has proceeded to grant puja bonus and that too solely on the ground that the refusal to grant the said claim would amount to discrimination. In our opinion, the approach adopted by the tribunal in dealing with this alternative claim for puja bonus which was not made in the demand and which had not been expressly referred to the tribunal is entirely erroneous. The claim for puja bonus proceeds on entirely different considerations. Customary puja bonus undoubtedly prevails in many industries in Bengal but there are certain tests which have to be applied in determining the validity of the claim. The amount by of way of puja bonus, it must be shown, has been consistently paid by the employer to his employees from year to year at the same rate, that it has been paid even in years of loss and that it has no relation to the profit made by the employer during the relevant year. The course of conduct spreading over a reasonably long period between the employer and the employees in the matter of payment of puja bonus is of considerable importance in dealing with the claim of customary puja bonus [Vide: The Graham Trading Co. (India) Ltd. v. Its Workmen (1)]. A claim for puja bonus can also be made in a proper case of the ground that the payment of such bonus is an implied term in the contract of employment [Vide: Messrs. Ispahani Ltd., Calcutta v. Ispahani Employees' Union(2). Such a claim again would necessarily involve the consideration of several relevant facts none of which has been alleged or proved in the present proceedings. Therefore, the decision of the tribunal awarding puja bonus to the workmen cannot be sustained. Indeed, in awarding puja bonus to the workmen the tribunal has failed to consider that it was making out an entirely new and inconsistent case for the workmen and granting the said claim without any proof of the relevant facts which would support such a claim. It is rather surprising that

even when the tribunal by its award wanted to grant the demand for puja bonus it did not think it necessary to clarify at what rate the said bonus was to be paid. The award is absolutely vague in that behalf and that is another infirmity in the award. Since that is the only point in Civil Appeal No. 459 of 1960 preferred by the Station we must hold that the appeal succeeds and must set aside the award made by the tribunal under issue No. 1 (a).

Before we part with this appeal, however, we ought to add that after special leave was granted to the Station to prefer its appeal it applied for stay of the award directing the payment of puja bonus and stay was granted by this Court on condition that the amount of puja bonus should be paid by the Station to its employees on their furnishing security to the satisfaction of the management. Accordingly the Station has paid to its workmen puja bonus for three years. We suggested to the learned Attorney General that in case his appeal were to succeed the Station may consider whether it would partially forego its claim to recover the amount already paid by it to its workmen, and the learned Attorney-General, after consulting his client, has stated before us that the Station would forego one-third of the total amount paid by it to its employees under the orders of this Court. This one-third amount, we were told, is in the neighborhood of Rs. 65,000/- The learned Attorney-General also stated that the balance of two-third amount which it would recover from its employees can be paid by each one of them either by easy instalments or at the time when he would receive his gratuity or provident fund; the employee may exercise his option in that behalf. It appears that some of the employees who received the said amount have left the service of the Station and at that time have refunded the amount received by them. The Station would be prepared to give back to such employees one-third of the said amount. In our opinion, the attitude adopted by the Station in this matter is very fair and it would relieve the workmen from their liability to return one-third of the total amount received by them in pursuance of the orders of this Court.

That takes us to Civil Appeal No. 460 of 1960 preferred by the workmen. Mr. S. T. Desai, who argued this appeal, could not seriously press the workmen's case against the refusal of the tribunal to allow their demand for pension in lieu of the existing practice of paying gratuity. On a consideration of the relevant facts the tribunal came to the conclusion that this demand was not justified, and, in our opinion the conclusion of the tribunal is well founded. Then, as regards the other demand which is the subject-matter of the appeal the tribunal has increased the house allowance at a flat rate of Rs. 20/- instead of Rs. 10/- and this increased rate has been paid by the Station as from the date when the award became enforceable. Mr. Desai contends that the tribunal should have made an award granting the demand for accommodation or in the alternative should have awarded larger amount by way of house allowance. We are not impressed by this argument. A demand for the provision of housing accommodation can be reasonably entertained where it appears that the financial position of the employer can bear the burden involved in the said demand. Under the present economic conditions prevailing in the industry the responsibility for providing housing accommodation cannot reasonably be placed solely on the shoulders of the employer. In due course the problem may have to be tackled by the industry in co-operation with the State. The State will have to bear a part of that responsibility [Vide:

> The Patna Electric Supply Co. Ltd., Patna v. The Patna Electric Supply Workers' Union (1))]. The tribunal has considered the financial position of the Station, the

urgency of the damned made by the workmen, and has come to the conclusion that the demand for housing accommodation was not justified and that the ends of social justices would be met in the present case if a flat rate of enhancement of Rs. 20/- is awarded. It is true that the Station gives housing accommodation for members of the senior staff but as the tribunal has pointed out there are special reasons how more favourable terms have to be offered to senior research staff in order to get the services of properly trained and properly equipped personnel. In our opinion, the tribunal was right in refusing to draw an analogy between the requirements of the senior research staff and the junior staff with whose claims the tribunal was dealing. Therefore, we are not satisfied that there is any substance in the grievance made by the workmen against the award passed by the tribunal in respect of house allowance. The result is Civil Appeal No. 460 of 1960 fails and is dismissed.

There would be no order as to costs in both the appeals.

Appeal No. 459 allowed.

Appeal No. 460 dismissed.