ALLY Joseph Silvain

2020 IND 5

THE INDUSTRIAL COURT OF MAURITIUS

(CIVIL JURISDICTION)

C N 46/12

In the matter of :

ALLY Joseph Silvain

Plaintiff

v/s

ISLAND FERTILIZERS LTD

Defendant

JUDGMENT

Plaintiff is praying from this Court for a judgment condemning and ordering defendant to pay him the sum of Rs 9,707.17 representing balance due on end of year bonus which he contended was payable to him. Defendant has denied being indebted to the plaintiff in the sum claimed or any other sum whatsoever.

The pleadings

In an amended plaint dated 23/3/2015 plaintiff averred that he was in defendant's continuous employment as Bag Handler since 18.10.04 where he was employed on a 6-day week basis. Plaintiff's main duty consisted of stacking of bags on pallets and loading and unloading bags on lorries and containers. His monthly remuneration was at the rate of Rs 8,575 and as at December 2010, his monthly basic salary was Rs 8, 368.

It is also averred that in addition to his monthly basic salary plaintiff is paid a bonus under the "Bonus Incentive Scheme" at an agreed rate between the Union, the CMTCEU and defendant. His total earnings including basic wages and overtime for period January 2010 to December 2010 amounted to Rs 135,678.63 (paragraph (h)) whilst his total earnings for the

aforementioned period including basic wages, overtime and piece of work amounted to Rs 252 164.63 (paragraph (i)).

Plaintiff further averred that on or about 22.12.10 defendant paid him the amount of Rs 11 006.92 calculated on the basis of one twelfth of basic wage and overtime instead of one twelfth of basic wage, overtime and piece work for period January 2010 to December 2010 (Underlining is mine). Hence his claim in the sum of Rs 9,707.17 as particularized at paragraph 2 of the plaint and reproduced below:

Balance due on End of Year Bonus payable

(Rs 252,164.63 - Rs 135,678.68)/ 12 = Rs 116, 486/12 = Rs 9,707.17

In an amended plea defendant whilst admitting that plaintiff was employed as bag handler also averred that plaintiff was also, during his working hours engaged in the unstuffing of containers. It admitted that plaintiff was paid a bonus under the "Bonus Incentive Scheme" but averred that all the terms and conditions relating to the bonus are set out in an agreement reached between defendant and plaintiff's trade union, the CMCTEU and reduced in writing on 22 May 2012. In the said agreement it is provided that the payment of the said bonus does not depend on the achievement of any minimum production and/or delivery, contrarily to other methods of payment. The method of computation of such bonus is set out in Schedule 1 to the agreement.

Defendant denied that plaintiff was ever remunerated on a "piece rate" basis and hence denied that plaintiff's total earnings amounted to Rs 252,164.63. It averred that plaintiff has erroneously computed an amount paid to him as bonus. Defendant further denied that plaintiff was ever paid on piece rate and averred that the amount paid to plaintiff as bonus did not amount to "earnings" within the meaning of the Remuneration Order governing the plaintiff's employment. It averred that plaintiff was paid his End of Year Bonus in accordance with the legal provisions governing the payment of such bonus.

Defendant therefore denied being indebted to the plaintiff in the sum claimed or in any other sum whatsoever and thus prayed that plaintiff's action be dismissed with costs.

Plaintiff's case

The case for the plaintiff rested on the evidence of the following witnesses:

Mr Jolitot Francois Adonis who deposed as follows: On the 22 May 2012 he was Vice President of the Trade Union known as Chemical Manufacturing and Connected Trades Employees Union. In such capacity he signed an Agreement with the Management of Island Fertilizers (Doc.A). He confirmed that at paragraph 9 of the Agreement mention is made of a

"Bonus Incentive Scheme". Same was introduced since 2007 because there was a reduction of manpower. The scheme was meant to increase production and hence the workers' earnings too were increased.

The above witness explained the manner in which the scheme operated- for each bag of 50 kgs the bag handlers and forklift operators were paid 75 cents and 45 cents respectively whilst for each bag of 25 kgs they were paid 50 cents and 45 cents respectively. He stated that the bonus is related to the number of bags which the workers handled – the more bags they handled the more money they will earn under this scheme.

Under cross examination the above witness conceded that before signing the Agreement there were discussions between the Union and the Management. The Agreement governs the working relationship between the employer and employees. He admitted that paragraph 9 of the Agreement makes reference to a bonus. Same is paid each month based on the number of bags they handled – if during a month they handled 100 bags they will be paid – 100 x 75 cents. He further admitted that apart from the said bonus he also received a basic salary. The bonus is an additional remuneration and it is given to encourage more production. At the end of each month he is guaranteed his basic wages irrespective whether he was absent at work. There is no minimum target to be met. He conceded that the bonus was paid in addition to the basic salary and not in lieu and stead of the basic salary.

The above witness confirmed that his employment was governed by a Remuneration Order namely Factory Employees Remuneration Order. He further confirmed that the Agreement was signed voluntarily by all the workers and since then they were paid their bonus every month.

Mr Joseph Silvain Ally, the plaintiff in the present case adduced evidence which was in substance as follows:

He is working in the defendant company as Bag Handler since 18 October 2004. He explained that the defendant is a company which deals with the importation of raw materials for the production of fertilizers. He confirmed that his conditions of work are governed by the Factory Employees Remuneration Order and that as at December 2010 he was earning Rs 8,368

Plaintiff explained that his work consisted in firstly- unloading the raw materials from the containers and carried them to the pallets, from there they are brought by the forklift operators to the production unit (this is called "depotage" in their own jargon) and, secondly - after production the bag handlers loaded the bags onto the pallets and thereafter stacked them into the lorries. The bonus incentive was given to them according to the number of

bags they carried into the lorries. The bonus as mentioned in the plaint is based on the number of bags which they handle.

The “Bonus Incentive Scheme” was introduced in 2007 because there was a reduction of manpower. Before 2007 there were 22 bag handlers, then same was reduced as some 8-10 persons were sacked from work. The workers thus came forward with a proposition to the company to put into practice this scheme so as to give them an incentive to work. Before 2007 they were carrying about 100 -120 tons of fertilisers and after 2007 same had increased to 140 – 180 . Hence production had increased as well as their salary.

The plaintiff stated that he was not satisfied with the bonus which he received for the end of year 2010 in the sum of Rs 11,006.92 because ‘piece rate’ was not included therein. If same was included he would have earned an additional sum of Rs 9,707.17 as bonus for the year 2010, which sum he contended that the defendant company owed to him.

Under cross examination the plaintiff conceded that he was earning a basic salary. He stated that when there was negotiation between the company and the Union he participated in the negotiation because at the material time he was President of the Union. He conceded that the basic salary was paid to the bag handlers whether they came to work or not whereas the bonus depended on the number of bags which they handled. They were also paid overtime when they worked more than the normal working hours. He confirmed that their work was governed by the Factory Employees Remuneration Order.

Defendant’s case

Mr G Veeramoutoo was called as a witness in support of the defendant’s case. He works as Consultant in the defendant company. He confirmed that in the year 2012 there was an Agreement signed by the management and the workers and it took effect as from 2007 when negotiation started with the Union. He is aware of the contents of the Agreement because at the material time he was working on this project of “Bonus Incentive Scheme” and thereafter he drafted the Agreement document which was signed by both parties.

The above witness confirmed that it is paragraph 9 of the Agreement which makes mention of this “Bonus Incentive Scheme”. He explained that the Union made a request to introduce a piece rate scheme. After an analysis of the factory’s set up he came to the conclusion that such a scheme could not be put into operation and instead he proposed an incentive scheme. An agreement was thus signed to that effect. He explained the difference between a piece rate scheme and a bonus incentive scheme. In a piece rate scheme the worker is paid in relation to his production i.e the worker does not earn a basic salary. But if the piece rate is less than the basic salary then he will be paid the basic salary whereas with the

bonus incentive scheme, in addition of the basic salary the worker also earns a bonus. He further added that a worker cannot earn both a basic salary and a 'piece rate' remuneration. In relation to the present matter it was agreed between the parties namely concerning bag handlers that paragraph 9 of the Agreement is a bonus. They will be paid a basic salary, their overtime and to encourage them to increase production they will also earn a bonus.

Mr Veeramoutoo confirmed that the company is governed by the Factory Employees Remuneration Order which in its paragraph 4 explains the manner in which the workers have to be remunerated if ever there was a piece rate scheme, namely the payment should not be less than 10% of what would have been paid as basic salary. Paragraph 9 of the Agreement made mention of bonus and the latter is not related to the salary. It was agreed that the bonus to be paid in relation to this incentive scheme would be 50 cents and 75 cents respectively. It is not related to 10% of the salary. If it was 'piece rate' the amount paid should be 10% more than the basic salary, which is not the case here. He further explained that the Remuneration Order does not include bonus as forming part of earnings and hence bonus cannot be included in the calculation for the payment of the end of year bonus.

Under cross examination the above witness conceded that there are two elements in this concept of 'piece work' namely production and money –the more bags handled by the workers the more money they will earn. He explained that when we talk of 'piece rate' it concerns the production of one individual but in the present case it is the production of all the employees together and not an employee individually. He further added if it was a piece rate scheme he would never have included a basic salary over and above this bonus. He admitted that the remuneration earned by a worker doing 'piece rate' must be 10% more than the basic salary but if the piece rate is more than the basic salary then he will be paid accordingly. He maintained that a worker cannot earn both a basic salary and a bonus. In the present matter plaintiff was earning a basic salary plus a bonus.

In re examination the witness stated that in a piece rate scheme the production of every worker is being counted individually but in the present case it is the production of all the employees put together which is then divided by the number of workers.

Submissions

Counsel appearing for the defendant drew the attention of the Court to the fact that nowhere in the plaint is there mention of 'piece rate'. Paragraph (g) of the plaint was referred to and which makes mention of a bonus under the "Bonus Incentive Scheme" at agreed rate between the Union and the defendant which means to say that the plaintiff has himself agreed that the payment which he received under paragraph 9 of that particular Agreement reached between the Union and the management is a bonus. It was therefore submitted that

paragraph (g) is an incentive bonus paid to encourage the employees to work more, to be punctual at work and to encourage team spirit. The workers were being remunerated for each and every bag which they handled.

Counsel further submitted that there is a distinction to be made between a piece rate and a bonus. As per paragraph 4 of the Remuneration Order it is clearly specified that "an employee may be required to perform piece work by his employer at such rates to be agreed upon between them, which shall be so determined that the employee shall earn not less than 10 per cent over and above the relevant rate specified in the First Schedule". It is therefore the contention of the defendant that if an employee was required to be paid on piece rate the remuneration payable should be at least 10% over and above but as per the evidence on record the amount paid to the workers under the bonus scheme does not amount to 10% over and above what is provided in the Schedule.

It is the submission of Counsel for the defendant that the question to be determined by the Court is whether that particular bonus is a piece rate or not. Reference was made to the definition of "piece rate" from the Advisory Constitution of Division of Service (sic) as follows: "piece rate is a type of employment when workers are paid for the piece of work that they do". The website definition of piece rate was also referred to by Counsel as well as the definition of piece rate from the ILO which defines piece rate as "piece rate wage occurs when workers are paid by the unit performed instead of being paid on the basis of time spent on the job". This is contrary to the situation in the present matter where an employee is entitled to a basic wage, whether he comes to work or not. If he works overtime he is remunerated accordingly, but to encourage him to perform more, he is paid a bonus. That particular bonus applies from the very bag he handles and the bonus is calculated at the end of the day on the total number of bags handled by the group of workers divided by the number of workers.

It was further submitted that a piece rate is not related collectively – it is individual whereas in the present case it is an amount paid on the performance of a group to encourage working together as can be seen at paragraph 9 of the Agreement. Hence the bonus cannot be included in the earnings for the payment of the end of year bonus. Counsel for the defendant thus submitted that the present claim should be set aside.

State Counsel Ms Maherally offered submissions on this issue of 'piece rate' and 'bonus'. She submitted that the purpose of the bonus was to boost productivity and it benefitted both parties. The more the workers produced the more they got in terms of pay and the more the company benefitted in terms of productivity. The bonus was paid solely to those who were involved in the production process and it excluded employees like watchman, cleaners etc.

State Counsel referred to the Factory's Employees Remuneration Order namely paragraph 7 of the Second Schedule where it is stated that the bonus is calculated on one twelfth of the earnings. She referred to the definition of earnings in the said Regulations and she contended that in the present matter the bonus should have been included in the earnings for the purpose of computing the end of year bonus. Counsel further contended that although the defendant has averred that the bonus scheme is not dependent on a minimum production no evidence has been adduced to substantiate that a minimum target is a pre requisite for piece rate.

State Counsel submitted that the term piece work as set out in the Remuneration Order G N 141 of 2001 is a general term, it refers to a system of work and not to a particular scheme. It can take different forms and even the form of a bonus incentive scheme as per the Agreement. As per the law when a person is working on a piece work system he is entitled to some additional pay which should in no case be less than 10% of the rate specified in the First Schedule. State Counsel referred to the definition of piece rate in Oxford Concise dictionary where piece work is defined as work paid according to the amount produced. Counsel highlighted the fact that in the said definition there is no mention of any minimum. She contended that the issue of minimum is not a pre requisite of piece work.

It was further submitted that our own law caters for piece work. There are various systems and various names given but the whole purpose is to boost productivity. Piece rate is a system and not a scheme. She referred to a definition from a text book relating to production management where a minimum hourly wage is guaranteed. She submitted that there can be piece rate but there can be modified version as well. Reference was made to plaintiff's pay slip (which was produced during trial) and she highlighted that there is a basic salary and on top of the basic there is the production incentive bonus which she contended constitute the piece rate. She further contended that piece rate is not confined to output per individual but there can be "individual productivity, work group or departmental productivity" (sic).

Counsel cited the case of DPP v Floreal Knitwear Ltd 1986 where the issue was raised as to whether a person engaged on a piece rate is entitled to be paid the minimum pay as prescribed under the Act. GN 191 of 1984 was considered in the said case where the wordings are the same as in the Factory Employees Remuneration Order. The Court has held that this Regulation overrides the other definitions and that we have to consider our own legislation. According to Counsel any system which is here to boost productivity is piece rate. She contended that the same reasoning was adopted in the above case where piece rate is a system to boost productivity. The bonus system paid by the defendant is for all intents and purposes as per our own legislation a piece rate. Therefore it goes with the

definition of earnings and the latter is to be included for the purpose of end of year bonus. The workers were paid a basic pay and a bonus which is 10% more than the basic pay and this is a piece rate. The bonus paid in the present case does amount to piece work as per paragraph 4 of GN 141 of 2001. It was therefore submitted that the plaintiff has been short paid because the amount paid to him as end of year bonus did not take into account the amount paid to him as bonus.

In reply to the above submission Counsel appearing for the defendant stated that the documents that he had produced and referred to by Counsel for the plaintiff was just to enlighten the Court as to the difference between a piece rate and a normal pay. He further stated that the only definition of piece rate in our legislation is to be found at Section 4 of the Remuneration Order. Counsel conceded that the bonus was meant to encourage the employees to produce more. It depends on the performance of a group. The Oxford dictionary meaning of piece rate is in respect to the work paid for the amount produced.

Analysis

I have carefully analysed all the evidence on record as well as the submissions of Counsel appearing for the defendant and State Counsel who submitted on the issue of 'piece rate' and 'bonus'. At the outset I wish to place on record that in the present matter the facts are not disputed. The only bone of contention is in relation to the issue of whether the remuneration earned by the plaintiff under the "Bonus Incentive Scheme" should have been included in the plaintiff's earnings for the period January 2010 to December 2010 for the computation of his end of year bonus for the year 2010.

It is the plaintiff's case that his total earnings for the period January 2010 to December 2010 should have included "basic wages, overtime and piece work" (Emphasis added), the latter being the remuneration paid to him under the "Bonus Incentive Scheme" and not only basic wages and overtime. Hence it is his contention that he has been short paid in the sum of Rs 9,707.17 on his end of year bonus for the year 2010 because the defendant did not include the amount he earned under the "Bonus Incentive Scheme" as earnings. Hence his end of year bonus for year 2010 which is one twelfth of his earnings, was calculated on the basis of his basic salary and overtime that is on the sum of Rs 135,678.63 instead of Rs 252,164.63.

On the other hand it is the defendant's contention that the remuneration paid under the "Bonus Incentive Scheme" is a bonus calculated on the basis of the total production of all the employees divided by the number of employees involved in the bag handling operations.I t is a bonus paid collectively to a group and it does not depend on the production of one employee individually. Hence it is the defendant's case that the remuneration paid to the

plaintiff under the “Bonus Incentive Scheme” for year 2010 cannot be included in the plaintiff’s earnings for the year 2010 for the computation of his end of year bonus .

The issue to be determined by the Court is whether the remuneration paid under the “Bonus Incentive Scheme” forms part of the earnings of an employee so as to be included in the calculation of the end of year bonus payable to the employee. At this juncture it is pertinent to state that the law applicable in the present matter is the **Factory Employees (Remuneration Order) Regulations 2001** as amended, which is the law governing the terms and conditions of the plaintiff’s employment as averred in paragraph 1 (b) of the amended plaint. Paragraph 7 of the Second Schedule to the above Regulations makes provisions for the payment of the end of year bonus as follows:

7. End of year bonus

(1) Every employee who has remained in continuous employment with the same employer for one year shall be entitled at the end of that year to a bonus equivalent to one-twelfth of his ***earnings*** *for that year [Emphasis added].*

(2) Every employee who –

(a) takes employment during the course of the year;

(b) is still in employment as at 31 December; and

(c) has performed a number of normal days’ work equivalent to not less than 80 per cent of the working days during his employment in that year, shall be entitled at the end of that year to a bonus equivalent to one-twelfth of his earnings for that year.

Now the term “earnings” is defined in ***Regulation 2*** of Regulations 2001 as follows:

“earnings” –

(a) means basic wages; and
(b) includes –
(i) wages for work done in excess of a normal day’s work, or on a public holiday;
(ii) remuneration paid under paragraphs ***4****, 5, 9, 10, 11 (1) (a) and (4) of the Second Schedule; [Emphasis added].*

In the instant case as per the undisputed evidence on record the plaintiff’s earnings which were taken into consideration for the calculation of his end of year bonus for year 2010 were namely his basic wages and overtime for period January 2010 to December 2010 amounting to Rs 135,678.63. It is the plaintiff’s contention that for the computation of his end of year bonus 2010 the remuneration which was paid to him under the “Bonus Incentive Scheme”

and which he considered to be “piece work” should have been included in his earnings so that same would have amounted to Rs 252,164.63.

From the above definition of “earnings” it is clear that “piece work” form part of the “earnings’ of a worker inasmuch as it is clearly stipulated that “earnings” includes all remuneration paid under ***paragraph 4 of the Second Schedule*** and the said paragraph indeed refers to “Piece work”. The question to be determined in relation to the present issue before this Court is whether the remuneration paid to the plaintiff under the “Bonus Incentive Scheme” amounts to “piece work” and hence is to be included in the plaintiff’s earnings for the computation of his end of year bonus as per the plaintiff’s contention, or a bonus as contended by the defendant and hence does not form part of the plaintiff’s earnings for the calculation of his end of year bonus.

At this juncture it is pertinent to refer to **paragraph 4 of the Second Schedule** to the **Factory Employees (Remuneration Order) Regulations 2001** which makes reference to “piece work”. Same reads as follows:

4. Piece work

(1) Every employee may be required to perform piece work by his employer at such rates to be agreed upon between them, which shall be so determined that the employee shall earn not less than 10 per cent over and above the relevant rate specified in the First Schedule.

(2) Where an employee is required to perform piece work on a public holiday or in excess of the normal working hours on any day, he shall be remunerated at a rate which shall not be less than a sum exceeding that which he would be entitled to under paragraph 2(1) by 10 per cent.

Turning to the case in hand, it clearly transpires that it was the remuneration paid to the plaintiff as bag handler under the “Bonus Incentive Scheme” which is in issue in the present case. Therefore the Court will address its mind to this scheme and analyses its purpose, aims and the manner in which it is operated so as to determine whether it was meant to be a piece rate remuneration or a bonus. On that score the Court bears in mind the undisputed evidence on record that this scheme forms part of an Agreement which was signed by the Management and the workers – See Doc.A and the clause relevant to the instant issue is at paragraph 9 entitled *“Bonus Incentive Scheme”.* As per the said paragraph it is a scheme applicable to “*the employees who are directly involved in the production process in the factory and those in the bag handling and forklift operations for manual loading and unloading”*. Hence plaintiff as bag handler and all the other bag handlers are directly concerned.

The aim and purpose of this scheme as per the above Agreement is to encourage *"team work, team spirit, individual punctuality and attendance at work for the core employees".*

The manner in which this scheme operates is explained as follows:

"The scheme will operate under normal conditions whenever there is production and/or complete manual delivery by the bag handlers, but the company does not in any manner whatsoever guarantee any minimum production and/or delivery on any day.

The bonus is paid in addition to, but not in lieu of, the daily wage, to the employees who are fully present in their respective team for the whole day and the payment does not depend on the achievement of any minimum production and/or delivery, contrarily to other methods of payment." [Underlining is mine]

Turning to the case in hand there is indeed undisputed evidence on record that the plaintiff and all the workers involved in the bag handling operations were guaranteed their basic wages irrespective of whether they come to work or not. However the remuneration under the "Bonus Incentive Scheme" is only paid to the *"employees who are fully present in their respective team for the whole day".* Its mode of calculation is clearly set out in Schedule 1 of the Agreement at paragraphs (a) and (b) (See Doc.A). For the production – bag of 50 kg the calculation is as follows: *"for each bag of 50 kg produced and manually handled daily, of Rs 1.20/ per bag to be shared among the employees concerned, in the ratio of Rs 0.75 for the team of Bag Handlers and of Rs0.45 for the team of Production/factory workers and Forklift Drivers, who were present in their respective team for the whole day including overtime if necessary".* The same mode of calculation applies for the production - bag of 25 kg. It is only the rate which differs (see paragraph (b)). The Court notes that an example is also given at paragraphs (a) and (b) of Schedule 1 of how to calculate the remuneration payable under the "Bonus Incentive Scheme".

It can clearly be seen from the mode of calculation and example given at paragraphs (a) and (b) of Schedule 1 of the Agreement that this 'bonus' as it is termed in the scheme, is calculated on a day to day basis, based on the total number of bags handled by the **whole team** of employees present on that day and divided by the number of bag handlers who actually take part in the bag handling operations. Hence all the bag handlers who took part in the bag handling operations will receive the same amount of remuneration under this scheme as the latter is not calculated on the number of bags a bag handler has handled individually but on the number of bags collectively handled by the team of employees actually taking part in the bag handling operations. This is in line with the whole spirit of this 'Bonus Incentive Scheme" which is in the first place to increase production whilst at the same time promoting team spirit as stipulated in paragraph 9 of the Agreement and

explained by Mr G Veeramoutoo who works as Consultant in the defendant company and who actually drafted this Agreement (i.e Doc.A).

In the light of the above the Court is of the considered view that the remuneration paid under this "Bonus Incentive Scheme" cannot be considered as a "piece rate" remuneration. If it was so the mode of calculation would have been different, namely it would have been based on the number of bags individually handled by a worker and each worker involved in the bag handling operations would have received a remuneration based on the number of bags he has handled individually and not on the number of bags collectively handled by the team of employees present and taking part in the bag handling process.

The submission of State Counsel that there can be a modified version of 'piece rate' which can take different forms and even the form of a "Bonus Incentive Scheme" cannot stand in the present case where the terms and conditions of the plaintiff's employment is governed by the **Factory Employees (Remuneration Order) Regulations 2001**. Paragraph 4 of the Second Schedule to the Regulations 2001 (reproduced above) makes it clear that a worker cannot earn a basic wage and a 'piece rate' remuneration at the same time. But in the present case, as clearly pointed out by Mr G Veeramoutoo and stipulated in the Agreement signed by both parties, the workers involved in the bag handling operations are given a 'bonus' as per the mode of calculation elaborated in the Agreement in addition of their basic wages.

In fact in her submission State Counsel conceded that in the present case the bag handlers earn a basic salary and on top of that they receive a production incentive bonus which she however contended constitute a piece rate remuneration. Whilst it is correct to say that this "Bonus Incentive Scheme" may be construed as a productivity bonus however it is significant to note that "productivity" is not included in the definition of "earnings" in the Factory Employees (Remuneration Order) Regulations 2001 and hence it cannot for all intents and purposes be computed for the end of year bonus of a worker.

Furthermore there is no minimum target which has to be met by the worker to obtain a remuneration under the "Bonus Incentive Scheme" as clearly set out at paragraph 9 of the Agreement. At this juncture the Supreme Court case of **Director of Public Prosecutions v/s Floreal Knitwear Ltd [1986] MR 198** cited by State Counsel is of relevance as the question which was to be determined by the Court in the said case *"is whether , notwithstanding the fact that the worker had been required to perform piece work and had failed to complete the minimum pieces required to be performed , she should not have earned the minimum weekly wages of Rs 117.43 for having put in the number of hours of work required of her during the relevant period".* The Supreme Court made the following

observations: *"Whilst we agree with the proposition that one of the aims of [GN No.191 of 1984]* (i.e the Export Enterprises Remuneration Order Regulations which was applicable in the said case) *is to ensure productivity and boost it up amongst workers we will observe that regulation 3 (1) strictly provides that every worker employed by an export enterprise shall be remunerated at the rates specified in the First Schedule and governed by the Second Schedule, in so far as the conditions of employment are concerned. In our view, the minimum wages to be paid to any worker who falls within the ambit of the Remuneration Order are set out in the First Schedule and must receive strict adherence. It matters not whether the worker is engaged "au temps" or "au rendement". If he or she is employed "au rendement" paragraph 10 of the Second Schedule provides that he or she shall be paid more than the minimum wages but certainly not less* [Underlining is mine].

It is also significant to note that regulation 5 of the Government Notice does not prevent an employer from paying a worker a higher remuneration than the one specified in the First Schedule but that regulation does not authorize an employer to reduce the worker's remuneration in any event. On what basis then could piece rates be agreed upon? We endorse the following reply given by this Court in the case of Surjoo v LSP Ltd [1991 MR 1921] –

"Presumably, on the nature of different pieces, their number and the parameter of 45 hours per week, the governing criterion being that at least the notional prescribed minimum weekly salary increased by 10% is reached, though by agreement of the parties it could be even higher. [Page 193]" [Emphasis added]

In the case in hand the "Bonus Incentive Scheme" does not impose any minimum target on an employee for the latter to benefit from this scheme. The worker will obtain the remuneration due under this scheme once he is involved in the bag handling operations and the remuneration to be paid to him under this scheme does not depend on any minimum production but on the number of bags handled collectively by the whole team of bag handlers as already elaborated above. Furthermore the remuneration paid under this scheme is not related to this issue of 10% of the daily wage nor does it exclude the daily wage payable to every bag handler.

Conclusion

Based on all the above considerations, the Court is not satisfied that the plaintiff has proved his case on a balance of probabilities. Hence his claim in the sum of Rs 9,707.17 against the defendant is set aside.

I therefore dismiss the present plaint lodged by the plaintiff against the defendant.

This 10th March 2020

K. Bissoonauth (Mrs)

Ag President, Industrial Court.