

(1963) 02 CAL CK 0029
In the Calcutta High Court

Grahams Trading Company (India) Ltd.	APPELLANT
Vs	
Second Industrial Tribunal and Others	RESPONDENT

Date of Decision : 08-02-1963

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10, 2, 29, 33C

Citation : (1963) 2 LLJ 153

Hon'ble Judges : B.N. Banerjee, J

Bench : Single Bench

Judgement

B.N. Banerjee, J.—The petitioner-company, Grahams Trading Company (India), Ltd., is a trading concern. Between the years 1940 and 1952, the petitioner-company admittedly used to pay to its employees, at or about the time of the pujas each year, a sum of money equivalent to basic salary for one month, as ex gratia payment. Such payment was, however, discontinued in the year 1953. Respondent 2, Grahams Employees' Union, asserted that the payment, made at or about the time of the pujas each year, was in reality payment of customary puja bonus, although called ex gratia payment, and the petitioner-company had no right to discontinue such payment. This raised an industrial dispute and the dispute was ultimately referred, by the State Government, to an industrial tribunal for adjudication. That tribunal found in favour of the petitioner-company and rejected the case of respondent 2 union that the payment, made at or about the time of the pujas each year, was really payment made by way of customary puja bonus. Respondent 2 union appealed against the award before the Labour Appellate Tribunal. The Appellate Tribunal reversed the award of the industrial tribunal and directed the petitioner-company to pay one month's basic salary as puja bonus for the year 1953. The petitioner-company appealed against the award of the Labour Appellate Tribunal before the Supreme Court. By its judgment, dated 7 May 1959, the Supreme Court dismissed the appeal and affirmed the award of the Labour Appellate Tribunal, holding, inter alia, that the payment although described as ex gratia payment, really constituted payment of

customary puja bonus, equivalent to one month's basic salary.

2. While the dispute as to payment of bonus for the year 1953 was pending, respondent 2 union claimed bonus for the year 1954, but that claim was rejected by the petitioner-company. In the year 1955, however, the petitioner-company paid to its workmen an amount equivalent to one and half months' basic salary, at or about the time of the pujas, but described the same as ex gratia payment. Thereafter, in the years 1956, 1957 and 1958, the petitioner-company paid to its workmen two months' basic salary as advance, at the time of the pujas, on the express condition that the said advances would have to be repaid and the terms of repayment would be entirely at the discretion of the petitioner-company. The other condition attached to the advances made was that the question of repayment of the advances would not arise until the decision of the Supreme Court became known. The advances were accepted by the workmen of the petitioner-company and respondent 2 union on the terms mentioned, Here in below, I Bet out one of the letters by the petitioner-company to respondent 2 union, containing the terms on which the aforementioned advances were made:

Reference is made to the resolutions extracts of, which have been furnished to the management and in order that an amicable settlement is reached, now makes its final offer of two months' basic salary as advance to all members of the union. The question of repayment will not arise until such time as the award of the Supreme Court in connexion with the dispute which is pending regarding the payment of bonus in previous years is made known. It should, however, be clearly understood that the two months' basic salary now being offered to all members of the union is an advance of salary, and is irrespective of the award which will be made by the Supreme Court and the terms of repayment of this advance are to be left entirely to the discretion of the management.

3. The judgment of the Supreme Court over the dispute as to bonus for the year 1953 was delivered on 7 May 1959. In the meantime the petitioner-company had advanced to its workmen two months' basic salary, for each of the years 1956,1957 and 1958, in all, six months' basic salary. Under the Judgment of the Supreme Court the petitioner-company became liable to pay to its workmen one month's basic salary as puja bonus for the year 1953 and because of the reasoning given in the said judgment became also liable to pay to its workmen the same amount as puja bonus for the years 1954,1956,1957 and 1958. The petitioner-company was not required to pay any separate bonus for the year 1955 because the ex gratia payment of one and half months' basic salary, made in the year 1955, which more than covered the liability for payment of puja bonus for that year. The petitioner-company, however, did not separately pay to its workmen the amount of puja bonus payable by it in each year 1953,1954, 1956,1957 and 1958, but adjusted five out of six months' basic salary, advanced to the workmen as hereinbefore stated, against bonus payable for the aforesaid years. For the year 1959, however, the petitioner-company separately paid one month's basic salary as puja bonus to its workmen. This the petitioner-company

claimed to have done in exercise of its discretion as to repayment of the advances which had been reserved to itself.

4. This form of adjustment was, however; resented by respondent 2 union and the resentment was ultimately converted into an industrial dispute. The State Government, in exercise of its power u/s 10 of the Industrial Disputes Act, referred the industrial dispute to the second industrial tribunal for adjudication. The issues that were placed before the tribunal for adjudication ultimately stood as here in below stated:

(1) Whether the complaint that the company has not paid bonus for 1953 in terms of the Supreme Court award is justified? To what relief, if any, are the workmen entitled ?

(2) Bonus for the years 1954, 1956, 1957, 1958 and 1959.

5. The industrial tribunal by its award came to the following conclusion:

(a) The question which arises in this case is whether the company was entitled to adjust the advances made during 1956-58 against the claim for bonus for 1953 allowed by the Supreme Court. The union's case is that these payments were really made as bonus, though they were not described as such but named as advances because a dispute regarding bonus was pending at the time. It has also been stated by the union's vice-president that there was some sort of verbal understanding to this effect. In cross-examination, however, he stated that he himself was not present at the time of discussion with the general manager when this understanding is said to have been given. No understanding has therefore been proved. But though in the notices and in the letters written by the company to the union in the matter of these advances, the company reserved the right to adjust them in future in its discretion, it never announced that they would be adjusted against the claims for the years previous to 1956. A dispute for bonus had arisen in 1953 and for 1953 and 1954 no payments were made whether as advance or otherwise. In 1955 bonus representing 11 months' salary was paid. Then from 1956 the company commenced paying two months' salary as advance. There is nothing to show that the company had ever had the intention to adjust these payments against the union's claims for bonus from 1953 to 1955. The company's contention therefore that it was entitled to adjust the advances against the claims for previous years, even though it had reserved the right of future adjustment, seems to be untenable. It is also untenable on another ground. Many of the employees to whom the advances were paid have retired or have been retrenched or otherwise left the service of the company, but it is admitted that no recoveries were made from any of them. It cannot also be that all the employees of the company in the year 1953 were serving the company during 1956-58. The statement, Ex. A, shows that many had been retrenched or retired in the meantime. So it could not have been intended by the company that the advance paid during 1956-58 would be adjusted in future against the claims for 1953 and 1954. Such a construction of the right of future,

adjustment reserved by the company would be most unreasonable and unfair to the employees. I hold accordingly that the employees are Justified in their complaint that the company has not paid puja bonus for 1953 in terms of the Supreme Court decision. The company should pay such bonus to those who were in service in 1953 and entitled to it within one month from the date of publication of this award.

(b) "On the same grounds it must be held that the company has not paid puja bonus for the year 1954 to the employees who are entitled to the same. It should therefore be paid to them at the rate of one month's basic salary. As regards the puja bonus for 1959 it is admitted that it has been paid by the company separately, and therefore the claim for that year should be disallowed. With regard to the years 1956-68 the company is entitled to adjust the claims against the advances of two months' basic salary as paid during those years. So it must be taken that the employees received puja bonus for these three years also. Hence the claims for puja bonus for 1956-59 are rejected.

6. The claim made by respondent 2 union for Profit-sharing bonus was rejected in the view that the company did not make sufficient profit to entitle the workmen to profit-sharing.bonus.

7. Aggrieved by the award, the petitioner-company moved tale Court, under Article 226 of the Constitution, praying for the quashing of the award and obtained this rule.

8. Mr. Meyer, learned advocate for the petitioner-company, contended, in the first place, that issue 1 as referred to the industrial tribunal was not an industrial dispute at all and should not have been adjudicated upon by the tribunal. He contended, in the next place, that the tribunal was wrong in holding that under the terms of the advances, the petitioner-company was entitled, if at all, to adjust the advances in future only and had no right to make any adjustment of the advances against the puja bonus payable prior to the year 1956. He contended further, that this error was apparent on the face of the award and as such the same deserved to be quashed. He contended further that the majority of the workmen, who used to serve the petitioner-company during the years 1963 to 1958, had either retired or had been retrenched or had left service under the petitioner-company and, if, in the year 1959, the petitioner-company was required to pay bonus for the past years to all of them and then try to recover the advances made to them, it would never be able to recover its advances and would only be compelled to pay to them bonus in addition to the advances made. He contended lastly that under the terms of the advances, the petitioner-company could not try any adjustment earlier than 1959, that is to say, prior to the decision of the Supreme Court in the bonus dispute of 1953 and in that background the tribunal was wrong in condemning the adjustments made by the petitioner-company as unreasonable.

9. Mr. Masud, learned advocate for the State Government, tried to repel the first

branch of the argument advanced by Mr. Meyer in the manner hereinafter stated. He contended that issue 1 might not be strictly speaking an industrial dispute but issue 2 was certainly an industrial dispute. Issue 1 had Borne cognatic connexion with issue 2 and the State Government was not very much in error in referring both the issues for adjudication by the industrial tribunal.

10. On behalf of respondent 2 trade union, two inconsequential arguments were made. It was contended, in the first place, that the Industrial Disputes Act contained no provision for set-off or adjustment of the workers' claim for bonus against any sum payable by the workers to the employer and, therefore, the tribunal should not have permitted any adjustment to be made even for the years 1956 to 1958. It was contended, in the next place, that the adjustments were sought to be made at too late a stage and therefore, no adjustment should have been allowed to be made at all.

11. I now take up for consideration the first branch of the argument made by Mr. Meyer. Industrial dispute, as defined in Section 2(k) of the Industrial Disputes Act, means any dispute or difference between employers and employees, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person.

12. Non-implementation of an award does not fall within the definition of industrial dispute. The Industrial Disputes Act contains a provision for penalty for breach of settlement or award and also a provision for recovery of money due from an employer under a settlement or award. Section 29 of the Industrial Disputes Act deals with penalty for breach of settlement or award and reads as follows:

Any person who commits a breach of any term of any settlement or award, which is binding on him under this Act, shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both, and the Court trying the offence, if it fines the offender, may direct that the whole or any part of the fine realized from him shall be paid by way of compensation, to any person, who, in its opinion, has been injured by such breach.

13. Section 33C of the Industrial Disputes Act deals with recovery of money due from an employer and is here in below quoted:

33C. (1) Where any money is due to a workman from an employer under a settlement or an award or under the provisions of Chap. VA, the workman may, without prejudice to any other made recovery, make an application to the appropriate Government for the recovery of the money due to him, and if the appropriate Government is satisfied that any money is so due. it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue.

(2) * * * (3) * * *

14. Therefore, if the petitioner-company was guilty of non-implementation of the award as to bonus, as affirmed by the Supreme Court (which of course I do not hold), the petitioner-company should have been proceeded against either u/s 29 or u/s 33C(1) of the Industrial Disputes Act but the matter should not have been referred to an industrial tribunal for adjudication. The contention that because issue 2 constituted an industrial dispute and because issue 1 had some sort of cognatic relationship with issue 2, the State Government was justified in referring both the issues for adjudication by the industrial tribunal does not appeal to me. Relationship between the two issues is too far-fetched if there exists any at all. On the face of it issue 1 does not constitute an industrial dispute at all and should not have been referred to an industrial tribunal for adjudication.

15. Be that as it may, assuming for the sake of argument that both the issues constituted industrial disputes, even then I have to hold that the tribunal was wrong in disallowing the adjustment as made by the petitioner-company. I have already hereinbefore set forth the terms on which the advances were made. Under those terms the mode of repayment was absolutely at the discretion of the petitioner-company. In exercise of that discretion the petitioner-company chose to set-off part of the advances against bonus payable for the years 1953,1954,1956,1957 and 1958, by way of enforcement of its discretion as to repayment. The tribunal was wrong in coming to the conclusion that under those terms the petitioner-company was not entitled to adjust the advances against work-men's claim prior to the year 1956. The tribunal did not hold that the petitioner-company was not entitled to recover the advances made to the workmen by way of adjustment. All that it held was that no snob adjustment could be made for the years 1953 and 1964. It, however, allowed such adjustments to be made against workmen's claim as to boons for the years 1956 to 1958. The terms on which the advances were made do not accommodate such a refinement and there was no reason to disallow the adjustment as made by the petitioner-company.

16. Further, Mr. Meyer is right in contending that unless the adjustments were made in the manner done by the petitioner-company, it could not have recovered the advances at all from workmen who had either retired or resigned or had been retrenched prior to 1959 and might still have been liable to pay bonus to such workmen. He is also right in con-tending that there was nothing unreasonable to the manner and in the time of adjustment regard being had to the terms on which the advances were made.

17. I do not mate much of the argument advanced on behalf of respondent 2 trade union. The argument that in the absence of express provision in the Industrial Disputes Act, advances could not be recovered by way of set off or adjustment, is a misconceived argument. The recovery of advances, by way of adjustment, was being made on the basis of discretion vested in the petitioner-company in terms of express agreement. The enforcement of that agreement

was not dependent upon any provision in the Industrial Disputes Act and the argument in the form made on behalf of respondent 2 union is unworthy of consideration. The other argument that the adjustment was made too late also does not appeal to me. The adjustments were made within the period of limitation and under the terms of agreement the same could not be made earlier than the delivery of the judgment of the Supreme Court in 1959. Shortly after the delivery of the judgment of the Supreme Court, the adjustments were made and this cannot be condemned as having been made too late.

18. In the view that I take, I hold that the award of the tribunal is unworthy of being sustained in respect of the year 1953 and 1954 and must be quashed to that extent.

19. This rule is made absolute. Let a writ of certiorari accordingly issue. There will be no order as to costs.

20. All interim orders stand vacated.