

(1959) 09 GAU CK 0004

In the Gauhati High Court

Case No : Civil Revision No's. 30 and 41 of 1959

Indian Tea Employees Union and Another

APPELLANT

Vs

Manager, Kathal Tea Estate and Another

RESPONDENT

Date of Decision : 02-09-1959

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Constitution of India, 1950 — Article 227
Payment of Wages Act, 1936 — Section 15, 17, 2

Citation : (1959) 09 GAU CK 0004

Hon'ble Judges : H. Deka, Acting C.J.

Bench : Single Bench

Advocate : N.M. Lahiri, for the Appellant; N.M. Dam in C.R. No. 30/59, P. Choudhuri and S.K. Sen, in C.R.No. 41/59, for the Respondent

Final Decision : Dismissed

Judgement

H. Deka, A.C.J.

1. These are two independent matters but since some common points of importance arise in both these matters, they were heard together and they will be covered by the single judgment I am going to deliver.

2. Civil Revision No. 30/59 refers to a rule obtained by the Indian Tea Employees Union against the judgment of the District Judge, Cachar dated 6th February 1959 arising out of an appeal filed u/s 17 of the Payment of Wages Act (Act IV of 1936). This matter originated out of an application made u/s 15 of the Payment of Wages Act to the Additional Deputy Commissioner of Silchar who is an Authority under the above Act.

The application was made by twelve persons who were employees of the Kathal Tea Estate against the Manager of the Kathal Tea Estate on the allegation that the employees were entitled to one month's back wages as Puja Bonus at the close of the wage period immediately preceding the Durga Puja payable on

account of the year 1956 but they were not so paid, and hence this application. The total claim of arrear of Puja bonus which is sought to be treated as delayed wages amounted to Rs. 1680 and per capita the Union asked for Rs. 10 for the twelve applicants as compensation and the total claim thus amounted to Rs. 1800.

The opposite party--the Manager of the Kathal Tea Estate--opposed this application and his case inter alia was that there was no implied condition of service to pay the amount of bonus claimed and that the claim was not legally maintainable. Both parties adduced evidence and the learned Additional Deputy Commissioner came to the finding that the Puja bonus as claimed did not form a condition of service and as such the manager was not bound to pay the Puja bonus applied for nor any compensation. He accordingly rejected the prayer of the applicants for the amount claimed as deferred or delayed payment of wages.

An appeal was taken against this order of rejection of the application which was heard by the learned District Judge and he also came to the finding that the Appellants had no legal claim for the Puja bonus and the Respondent was not legally bound to pay the same. He accordingly dismissed the appeal and it is against this order that an application u/s 115 of the CPC read with Article 227 of the Constitution of India has been filed in this Court on the basis of which this rule was issued. Speaking generally, the finding is conclusive on the point.

3. Civil Revision No. 41/59 is directed against an order of the learned District Judge, Cachar dated 9-3-59 whereby he allowed the appeal filed by the management u/s 17 of the Payment of Wages Act. An appeal was filed against the order of the Deputy Commissioner, Cachar, in which the Management of the Martycherra Tea Estate was directed to pay Rs. 3,759 as "Fagua" bonus of the employees for the year 1956 together with compensation to the Cachar Cha Sramik Union who made an application for realisation of Fagua bonus on behalf of the employees of the Martycherra Tea Estate.

The application was made by the trade union of the Cachar Cha Sramik Union representing 520 workers of Martycherra Tea Estate and its out-garden Aenacherra Tea Estate. This application was filed before the Deputy Commissioner, Cachar as I have already indicated against the Manager and owners respectively of the Martycherra and Aenacherra Tea Estates alleging non-payment of Fagua bonus for the year 1956 to the employees of the said tea gardens. The Union's case was that there was a long standing practice in the tea gardens of Cachar including the estates in question for payment of bonus twice a year--once during the Durga Puja and again during the Fagua festival and that this "Fagua" bonus was pre-determined and fixed on the basis of attendance and had no connection with any profit or loss of the tea garden.

According to the Petitioners the gardens in question were under a statutory obligation to pay the Fagua bonus at the time of the festival and they laid their claim at Rs. 7,512/- of which Rs. 2,312/- represented the deferred payment of

Fagua bonus and Rs. 5,200/- as compensation at the rate of Rs. 10/- for each worker. The application was resisted by the management of the gardens and they denied that there was any long standing practice for payment of such bonus or that such bonus was predetermined or based on average attendance as pleaded.

They contended that Fagua bonus was paid for the first time in 1948 and in subsequent years only as an ex-gratia payment and that there was no contract with the workers either express or implied in this respect and as such they were not entitled to ask for any such bonus as a matter of right or as an obligation of any kind, whether statutory or otherwise. According to them the ex-gratia payment in 1948 was introduced only to give impetus to the workers by the management, of their own accord, acting unilaterally and without any contract with the workmen

They admit that such payment was made for a period of five or six years absolutely as an ex-gratia payment which by itself could not establish either a past practice or a condition of service. The learned Authority rejected the contentions of the management and direct payment of Rs. 2,253/ -, as Fagua bonus plus Rs. 1,506/ -, as compensation at the rate of Rs. 3/- per individual worker.

4. The learned District Judge classified the contentions on three heads namely

- (1) whether the bonus in question was a wage within the meaning of the Payment of Wages Act?
- (2) whether the bonus in question was merged in the Delhi Agreement of 1956?
- (3) whether the applicants were entitled to, and the opposite parties were liable for the bonus in question and if so, to what extent?

The learned District Judge found as a result of the discussion of the evidence that there was no contractual obligation in the matter of the payment of the Fagua bonus and it did not form a part of the wages of the employees. The next question that the learned District Judge considered was whether the alleged long standing practice for payment of Fagua bonus might lead to any inference of an implied agreement, whose finding was that this could not be construed to have laid down a practice laying down an obligation for payment of Fagua bonus even though such payment was made for a period of five years by an intermediate owner, the present set of Defendants being new purchasers.

The learned District Judge held that in his opinion the bonus in question was not a wage within the meaning of the Payment of Wages Act and that the practice of payment for five years does not make the same a condition of service of the employees in which case alone they would succeed. In his opinion it was an ex-gratia payment as contended by the management of the gardens. He accordingly reversed the order of the learned Deputy Commissioner regarding payment of Fagua bonus with compensation and directed that the application be dismissed with cost. In this case also the finding is against the employees on the point that

the Fagua bonus was a condition of service and he accordingly held that he employees were not entitled to get the same.

The second point as formulated by the learned District Judge is unessential, as the wage period concerned relates to a period prior to the coming in force of the Delhi Agreement.

5. Much argument has been addressed on the point as to whether an application for bonus would come within the scope of Section 15 of the Payment of Wages Act and some authorities have been placed on either side, most of the authorities, however, dealing with profit bonus. Mr. N.M. Lahiri appearing for the Petitioners in both the cases has placed his argument on the basis of the Supreme Court's decision in *Ispahani Ltd., Calcutta Vs. Ispahani Employees' Union*, This case also referred to Puja bonus claimed by the employees of the *Ispahani Employees' Union*. These were two connected appeals filed by the employers against the decision of the Labour Appellate Tribunal in an industrial matter.

There the points raised were as to the legality of the judgment of the Appellate Tribunal and the Supreme Court held that the Appellate Tribunal had jurisdiction to go into the matter and that his decision was correct. Their Lordships observed that the claim for Puja bonus in Bengal was based on either of the two grounds. It might either be a matter of implied agreement between the employers and employees creating a term of employment for payment of the Puja bonus or (secondly) even though no implied agreement could be inferred, it might be payable as a customary bonus. In the instant case the question of customary bonus was not necessary to be considered. Their Lordships expressed themselves as follows:

In the present case we are concerned with the first category (namely, that based on an implied agreement creating a term of employment between the employer and the employees), and so we shall confine ourselves to that category.

Their Lordships in this connection further referred to the decision of the Appellate Tribunal in the case of *Mahalaxmi Cotton Mills Ltd. v. Their Workmen* 1952 2 LLJ 635 Cal (LATI-) and held that the test laid down in that case for inferring that there was an implied agreement for grant of such a bonus was correct and that they should all be satisfied before bonus of that type could be granted. The conditions laid down in that case were

- (i) that the payment must be unbroken;
- (ii) that it must be for a sufficiently long period; and
- (iii) that the circumstances in which payment was made should be such as to exclude that it was paid out of bounty, or in the form of a gratuitous payment.

The Tribunal relied on the facts of this case and their Lordships held that the findings were justified. Therefore in each case the facts have to be considered to

find out whether these conditions exist.

6. In the two cases, before me, the finding is that even though there was payment from time to time, the period was not sufficiently long to establish a practice. It was admitted on the other hand that there was no express condition of service for payment of either Puja Bonus or Fagua bonus. Therefore even if the observations of their Lordships in Ispahani's case 1959-2 Lab LI 4: AIR 1959 SC 1147 are applied to the facts of these cases, that cannot affect the finding arrived at by the learned District Judge. I am constrained to accept the finding of the lower appellate court that the facts would not justify an inference that the payment of the bonus as granted either formed a condition of service, express or implied, or that it had been paid for sufficiently long period to establish the practice by way of customary right or usage.

7. The only other case I should refer to in this connexion is the decision of the Supreme Court reported in Bala Subrahmanya Rajaram Vs. B.C. Patil and Others, There of course the point for consideration was,--where the bonus was payable not because of a contract but because of the award of an Industrial Court, whether it was "wages" within the meaning of the Payment of Wages Act as it stood before its amendment in 1957,-- and their Lordships view was that the Authority under the Payment of Wages Act had no jurisdiction to entertain an application u/s 15 of the Act. One of the many pertinent observations made by their Lordships in that case was as follows:

But we can see no way in which a bonus can be said to be payable if and when the terms of the contract of employment are fulfilled outside these two cases (namely, legislation, or a separate contract that is not part of the contract of employment), except when it is payable by reason of a term, express or implied, in the contract of employment itself.

8. In this case the Petitioners having failed to establish that this payment of bonus in either case was based on a separate contract that was not part of the employment or by any long standing practice, it could not be said that the bonus was due or could be claimed at all. Their Lordships further referred to the case of AIR 1949 142 (Federal Court) and observed that the learned judges of the Federal Court held that a bonus not payable under a contract of employment did not fall within the definition of wages in Section 2(vi) of the Payment of Wages Act as it stood before the amendment in 1957. Their Lordships formulated what was held in AIR 1949 142 (Federal Court) (supra) as follows:

that in order to bring a particular payment under the definition of "wages" two things are necessary "(1) a definite sum, and (2) a contract indicating when the sum becomes payable.and they said:

It is obvious that unless there is an express provision for paying a stipulated sum, the definition will not cover such a payment.

9. In both these cases the finding of fact being against the Petitioners as to the

bonus namely that they were due neither under the terms of contract of appointment, nor under any established practice the petitions had justly been dismissed. this Court has no jurisdiction to go into the evidence for finding of facts independently. Therefore applying the observations of their Lordships in the case referred to above to the circumstances of these cases, -- I must hold that the applications in both these cases claiming bonus were correctly dismissed. The case of 1959-2 Lab LJ 4: AIR 1959 SC 1147 referred to above did not apply to the facts of these cases, there the payment of Puja bonus having continued for a fair length of time. I accordingly direct that both of these applications be dismissed and the rules discharged but without costs.